

Appendix Exhibit 8

1 (Pages 1 to 4)

<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA</p> <p>ABBY B. CONLEY, : Plaintiff : v. : Civil Action No. 05-76E</p> <p>COUNTY OF ERIE, ERIE COUNTY OFFICE OF CHILDREN AND YOUTH, : a/k/a ERIE COUNTY CHILD WELFARE SERVICE, RICHARD SCHENKER, individually and in his capacity as County Executive of Erie County, Pennsylvania, PETER CALLAN, individually and in his capacity as Erie County Director of Personnel, DEBRA LIEBEL, individually and in her capacity as Executive Director, Erie County Office of Children and Youth, a/k/a Erie County Child Welfare Service, and JOHN A. ONORATO, ESQUIRE, individually and in his capacity as Erie County Solicitor, : Defendants :</p> <p>Deposition of MICHAEL CAULEY, taken before and by Carol A. Holdnack, RPR, Notary Public in and for the Commonwealth of Pennsylvania, on Thursday, March 9, 2006, commencing at 9:53 a.m., at the offices of Timothy D. McNair, Esquire, 821 State Street, Erie, Pennsylvania 16501.</p> <p>Reported by Carol A. Holdnack, RPR Ferguson & Holdnack Reporting, Inc.</p>	<p style="text-align: center;">INDEX</p> <p>TESTIMONY OF MICHAEL CAULEY</p> <p>Direct Examination by Mr. McNair 4</p> <p>Cross-Examination by Mr. Joyal 146</p> <p>Cross-Examination by Mr. Lane 178</p> <p>Redirect Examination by Mr. McNair 182</p> <p>Recross-Examination by Mr. Joyal 198</p> <p>Further Redirect Examination by Mr. McNair . . . 202</p> <p>EXHIBITS:</p> <p>Cauley Deposition Exhibit 1 84</p> <p>Cauley Deposition Exhibit 2 84</p> <p>Cauley Deposition Exhibit 3 192</p>
<p>1 For the Plaintiff:</p> <p>2 Timothy D. McNair, Esquire</p> <p>3 821 State Street</p> <p>4 Erie, PA 16501</p> <p>5 Anthony Angelone, Esquire</p> <p>6 Vendetti & Vendetti</p> <p>7 3820 Liberty Street</p> <p>8 Erie, PA 16509</p> <p>9 For the County of Erie, Erie County Office of Children and</p> <p>10 Youth, a/k/a Erie County Child Welfare Service:</p> <p>11 Richard A. Lanzillo, Esquire</p> <p>12 Knox McLaughlin Gornall & Sennett, PC</p> <p>13 120 West 10th Street</p> <p>14 Erie, PA 16501</p> <p>15 For the Defendants Richard Schenker, Peter Callan, and Debra</p> <p>16 Liebel:</p> <p>17 Edmund R. Joyal, Jr., Esquire</p> <p>18 Law Office of Joseph S. Weimer</p> <p>19 975 Two Chatham Center</p> <p>20 Pittsburgh, PA 15219</p> <p>21 For John A. Onorato, Esquire, individually and in his</p> <p>22 capacity as Erie County Solicitor:</p> <p>23 Mark R. Lane, Esquire</p> <p>24 Dell Moser Lane & Laughney, LLC</p> <p>25 525 William Penn Place, Suite 3700</p> <p>Pittsburgh, PA 15219</p> <p>Also Present:</p> <p>Wallace J. Knox, Esquire</p> <p>Solicitor, County of Erie</p>	<p>1 MICHAEL CAULEY, first having</p> <p>2 been duly sworn, testified as follows:</p> <p>3</p> <p>4 DIRECT EXAMINATION</p> <p>5 BY MR. McNAIR:</p> <p>6</p> <p>7 Q. Would you state your name and address, please.</p> <p>8 A. Sure. My name is Michael R. Cauley. My address</p> <p>9 is 8215 Millfair Road, McKean, Pennsylvania 16426.</p> <p>10 Q. And, Mr. Cauley, are you currently employed?</p> <p>11 A. No, I'm retired.</p> <p>12 Q. And when was the last time you worked and who did</p> <p>13 you work for?</p> <p>14 A. I worked for the County of Erie. And the last</p> <p>15 time that I worked was the 31st of December, I believe, of</p> <p>16 last year.</p> <p>17 Q. And what was your job title?</p> <p>18 A. I was the Solicitor for the Erie County Office of</p> <p>19 Children and Youth.</p> <p>20 Q. How long were you with the Office of Children and</p> <p>21 Youth?</p> <p>22 A. I was the full-time Solicitor for about three and</p> <p>23 a half years. I believe I started in April of 2002. And</p> <p>24 before that, I had worked for them on an independent</p> <p>25 contract basis part-time since approximately mid 1988.</p>

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<p>5</p> <p>1 Q. Okay. Let me just jump back and just ask you 2 about your education. Where did you go to college? 3 A. I went to Gannon College. Graduated in 1971. 4 Q. And then you went to law school. 5 A. Went to Duquesne University Law School in 6 Pittsburgh and graduated in 1974. 7 Q. And what did you do after you got out of Duquesne? 8 A. I came back to Erie. I went to work in private 9 practice in association with Warren Bentz, and I worked with 10 him probably for about two and a half years as an associate. 11 I worked for a time as a part-time assistant public 12 defender. Then for a time as a full-time assistant public 13 defender, until January of 1980. 14 January of 1980 I was appointed the first 15 assistant district attorney of Erie County under Mike 16 Veshecco, who was the district attorney. And I worked with 17 him in that capacity until the end of December of 1987, at 18 which point I went into private practice in association with 19 the Yochim Law Office here in town. 20 Q. Do you still maintain an association with the 21 Yochim Law Office? 22 A. No. 23 Q. And you're not practicing -- 24 A. Correct. 25 Q. -- at all, right?</p>	<p>7</p> <p>1 A. It was a little bit of each, sort of depending on 2 the need. It wasn't really formalized in that sense. I 3 mean, if you were to look at the chart it showed, as I 4 recall, that Attorneys Beveridge, Allgeier and Zack were -- 5 were listed in the legal department under me. But, you 6 know, as a practical matter, if she wanted to talk to them 7 about, you know, a particular case, that was, you know, that 8 was fine. 9 Q. What, in general, were your duties as the 10 full-time Solicitor for Office of Children and Youth? 11 A. Well, I represented the Agency in court 12 proceedings that involved hearings before Common Pleas Court 13 Judges and the Juvenile Court Master, litigation involving 14 dependent child petitions that the Agency filed to have 15 children adjudicated dependent. 16 I represented the Agency in hearings before Common 17 Pleas Court Judges where children who had been placed under 18 Court order would be subject to periodic Court reviews. I 19 represented the Agency in Orphans' Court proceedings 20 involving adoptions, termination of parental rights cases, 21 voluntary and involuntary termination proceedings, other 22 adoption-related proceedings. 23 I represented the Agency in certain administrative 24 law proceedings. My primary areas in those situations were 25 in connection with adoption subsidy appeals, for example. I</p>
<p>6</p> <p>1 A. Correct. 2 Q. Now, when you say you were the full-time Solicitor 3 for the Office of Children and Youth, how many solicitors 4 did they employ? 5 A. Well, the Office of Children and Youth employed as 6 County employees only one Solicitor. There were three other 7 people who were independently contracted to perform work for 8 the Office by the County. 9 Q. And did they work under your supervision? 10 A. Yeah, pretty much, um-hum. 11 Q. Okay. Was there an organization chart that 12 reflected your position and your supervisor and your 13 subordinates? 14 A. Yeah. 15 Q. Okay. Do you know if that chart still exists? 16 A. I can't speak to what exists over there since I 17 left in January -- 18 Q. Right. 19 A. -- given the change in administrations over there. 20 I presume that an organizational chart of some sort exists. 21 Q. Okay. And who was your supervisor? 22 A. My direct report was to Debi Liebel, who was the 23 director. 24 Q. And then did the contract solicitors report to you 25 or did they report to Ms. Liebel, or?</p>	<p>8</p> <p>1 was involved in handling needs-based budget appeals that 2 were working their way through the Bureau of Hearings and 3 Appeals arising out of complaints that the County had 4 regarding what we felt were improper budget allocations made 5 by the Department of Public Welfare and/or the Governor's 6 office for about three separate years. 7 I wasn't specifically involved in handling child 8 abuse expunction proceedings before the Bureau of Hearings 9 and Appeals. A couple of the other lawyers did those only 10 because I didn't have time to do them. So, technically, I, 11 you know, was responsible to do them, but I didn't actually 12 do them. 13 I worked in the office, you know, 8:30 to 5:00 14 every day. I would advise caseworkers/supervisors about 15 legal issues regarding ongoing cases that would come up. I 16 would consult with caseworkers about the propriety of taking 17 certain legal actions in court or instituting dependency 18 litigation, that sort of thing. 19 Q. That's a fairly broad spectrum. You mentioned 20 adoption subsidy appeals. Who's the beneficiary of an 21 adoption subsidy? 22 A. The child who is adopted. 23 Q. And what is the subsidy? 24 A. A subsidy is a monetary amount that is paid to the 25 adoptive parent for the benefit of the child, on a monthly</p>

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<p style="text-align: right;">9</p> <p>1 basis, that the child may or may not be eligible for 2 depending on whether or not it meets certain criteria 3 specified in the Pennsylvania Administrative Code. 4 Q. Okay. 5 A. In other words, certain children whose parental 6 rights have been involuntarily terminated, who are otherwise 7 eligible, for example, 4E funding that would be provided by 8 the federal government who have special needs of some 9 sort -- and there were five categories; I don't necessarily 10 remember them all off the top of my head -- that may or may 11 not qualify for an adoption subsidy, that would then be paid 12 by the County to the parent of the child until the child is 13 18 or the child, for one other reason, may not be eligible 14 for the subsidy any longer. Those monies are reimbursed to 15 the County under the Social Security Act Title 40 16 Provisions. 17 Q. Okay. 18 A. And there are various levels of subsidy payments 19 depending on the level of need of the child. 20 Q. And you mentioned budget appeals. Were you 21 yourself involved in the budget submissions for OCY? 22 A. No, not in my capacity as the Solicitor. For a 23 very short period of time after Ms. Liebel resigned, or 24 retired, as I recall, I was asked to fill the position of 25 the interim director, which I did between August 1st and</p>	<p style="text-align: right;">11</p> <p>1 You know, that might be in foster care; that might be in a 2 hospital setting; that might be with a fit and willing 3 relative resource. 4 It would be based on information that the Agency 5 would have and present to the Court in support of a request 6 to place the child, in order to ensure that the child would 7 be safe. Because the information would demonstrate that the 8 child would not be safe in the care of the parent from whom 9 the child was being removed. 10 Typically, when you're talking -- when we talk 11 about a prognostic detention order, we're talking about 12 removing a child from the care of a parent, usually the 13 mother, who is, at the time of the order is sought, pregnant 14 with the child and due to deliver the child at some point 15 down the road. 16 Q. Okay. Are prognostic detention orders issued with 17 regard to children who are already existing? 18 A. They -- 19 Q. For example, if one child is removed, is there an 20 order that would remove the other child even in the absence 21 of any actual abuse or neglect finding, or is that another 22 procedure? 23 A. That's a different -- that's kind of a different 24 animal, Mr. McNair. When I talk about a prognostic 25 detention order, I'm talking about an order that is designed</p>
<p style="text-align: right;">10</p> <p>1 October 31st. And I had a little bit of -- or a little bit 2 of peripheral involvement in the budget process at that 3 point. 4 And that's not the needs-based budget that was 5 submitted to the legislature and -- ultimately, the 6 legislature, but through the Department of Public Welfare, 7 but it was with the County budget for the next fiscal year. 8 So I had a little bit of involvement in that. But in terms 9 of the needs-based budget plan, no. 10 Q. Okay. Did you have any administrative or 11 supervisory duties over any of the employees of OCY other 12 than the contract attorneys? 13 A. No. 14 Q. Did you ever exercise administrative control over 15 any other employees? 16 A. No. 17 Q. I want to ask you a couple questions about 18 something that was referred to as a prognostic detention 19 order. Are you familiar with that? 20 A. Sure. 21 Q. What is a prognostic detention order? 22 A. Well, prognostic detention order is an order of 23 Court that is issued by a Judge authorizing the Agency to 24 remove a child from the care of its parent or parents and 25 place the child into, shall we say, a safer environment.</p>	<p style="text-align: right;">12</p> <p>1 to remove an unborn child from the parents at the time the 2 child is born. 3 Q. All right. And -- 4 A. It's kind of like getting the order in place 5 before the child is born -- 6 Q. Right. 7 A. -- so that the child's safety can be immediately 8 ensured at the time of birth. 9 Q. All right. And what kind of notice is given to 10 the expectant mother that this order is going to be 11 requested or entered? 12 A. There's no notice given in advance of the birth of 13 the child. When the child is detained, the parent is 14 notified that the Court has issued the order and the 15 detention has been effected. 16 Q. And is there a provision of the Child Protective 17 Services Act or the Rules of Court that authorizes this 18 particular procedure? 19 A. There's no -- there's no specific statutory or 20 regulatory authority that you can find that says that there 21 is such a thing as a prognostic detention order that can be 22 issued. To the extent that the Juvenile Act authorizes the 23 Agency to take a child into custody for the protection of 24 that child, that's the authority upon which we rely to seek 25 that protection for a child that is yet to be born.</p>

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<p style="text-align: right;">13</p> <p>1 Q. That would be the same provision that would permit</p> <p>2 you to take into custody a child who has been subjected to</p> <p>3 physical abuse or neglect.</p> <p>4 A. Sure.</p> <p>5 Q. And is there a statutory or provisional rule of</p> <p>6 Court that authorizes this to be done ex parte in the</p> <p>7 absence of an actual threat to the child?</p> <p>8 MR. JOYAL: I'm going to object to the form of the</p> <p>9 question.</p> <p>10 A. I think the -- to the extent that I can answer</p> <p>11 that question, my answer to the question would be we</p> <p>12 wouldn't -- it wouldn't be done in the absence of a threat</p> <p>13 to the child.</p> <p>14 Q. Okay. And that would be based on -- what would</p> <p>15 that be based on other than the opinion or conclusion of OCY</p> <p>16 staff?</p> <p>17 A. It would be based on an assessment of the level of</p> <p>18 risk that a parent would present to a child based on what</p> <p>19 the parent has demonstrated by his or her behavior in the</p> <p>20 past on that issue.</p> <p>21 Q. There are provisions of the Child Protective</p> <p>22 Services Law and the Juvenile Act that permit parents and</p> <p>23 their counsel to review the contents of their file. Are you</p> <p>24 aware of those provisions?</p> <p>25 MR. JOYAL: Objection to form.</p>	<p style="text-align: right;">15</p> <p>1 Juvenile Court? Start that way, and then we can work back</p> <p>2 and see with -- where it comes from.</p> <p>3 A. Well, it depends on what you mean by the word --</p> <p>4 by the term "seal." And I'm not trying to give you a hard</p> <p>5 time here. But, you know, Courts seal proceedings</p> <p>6 periodically. And I don't recall the Dependency Court ever</p> <p>7 sealing dependency proceedings as I understand that term to</p> <p>8 mean it.</p> <p>9 Q. Okay.</p> <p>10 A. Whereas, the Juvenile Act talks in terms of the</p> <p>11 confidentiality of proceedings that occur pursuant to it.</p> <p>12 And restricts the access of people to Court documents that</p> <p>13 are filed in connection with it. There are statutory</p> <p>14 provisions that cover that, yes.</p> <p>15 Q. And do those statutory provisions preclude the</p> <p>16 parties or their counsel from reviewing any of those</p> <p>17 documents, absent a special order?</p> <p>18 A. It depends what you mean by "any of those</p> <p>19 documents."</p> <p>20 Q. Documents filed with the Court.</p> <p>21 A. In some areas, yeah. The parties may not be able</p> <p>22 to review, for example, psychological material that's filed</p> <p>23 with the Court and made a part of the Court record that</p> <p>24 pertains in certain cases to themselves, or certainly in</p> <p>25 other cases to other parties who are also involved in the</p>
<p style="text-align: right;">14</p> <p>1 A. Well, the question is -- the question is pretty</p> <p>2 broad in the sense that it sort of depends on what you're</p> <p>3 talking about. There are provisions of the Pennsylvania</p> <p>4 Code that allow a parent or a child to review certain</p> <p>5 portions of what's referred to as the family record. There</p> <p>6 are provisions in the Juvenile Act that authorize parents or</p> <p>7 their children to have access to documentation that's</p> <p>8 submitted to the Court, for example.</p> <p>9 So the general answer to your question is yes, but</p> <p>10 it's not a -- it's not a complete across-the-board yes</p> <p>11 because there are certain -- there are exceptions, I guess,</p> <p>12 and/or limitations depending on what you're talking about.</p> <p>13 Q. Is there a statutory provision or rule of Court,</p> <p>14 either state or local, that issues a blanket seal on orders</p> <p>15 issued by the Court in a dependency case preventing the</p> <p>16 parents from having access to those petitions and orders?</p> <p>17 A. Can we take those one at a time.</p> <p>18 Q. Sure.</p> <p>19 A. Would you mind just going back through that again.</p> <p>20 Q. Okay.</p> <p>21 A. Ask your question again one at a time in terms of</p> <p>22 regulation statutory authority, rule of Court, state, local,</p> <p>23 whichever. You know, because there are different interests</p> <p>24 in that.</p> <p>25 Q. Is there a blanket seal on orders issued by the</p>	<p style="text-align: right;">16</p> <p>1 proceedings. So, you know, again, there's no</p> <p>2 across-the-board kind of arrangement. By and large, parties</p> <p>3 are entitled to be able to access the documents that are</p> <p>4 filed with the Court.</p> <p>5 Q. Okay. Is there any prohibition on a party</p> <p>6 accessing a prognostic detention order?</p> <p>7 A. At what point in time?</p> <p>8 Q. At the point in time where it is entered, signed</p> <p>9 by a Judge and entered on the docket.</p> <p>10 A. Is there any prohibition. I don't think that</p> <p>11 there's any prohibition, that there's no way that they would</p> <p>12 know about it.</p> <p>13 Q. If they were to check the docket. Right? Go into</p> <p>14 the clerk's office, look at the docket.</p> <p>15 A. You know, I can't speak to the clerk's practice on</p> <p>16 that, Mr. McNair. I don't know that if a prognostic</p> <p>17 detention order were filed of record in the clerk's office,</p> <p>18 that if somebody showed up there and said, I want to see any</p> <p>19 prognostic detention order that you have on baby -- you</p> <p>20 know, pick a last name.</p> <p>21 Q. Okay.</p> <p>22 A. Whether the clerk would allow that. You know, I</p> <p>23 don't know. I would be surprised if they would.</p> <p>24 Q. And I'm just asking what would be the legal</p> <p>25 authority to deny that.</p>

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<p style="text-align: right;">17</p> <p>1 A. Well, you're asking me to speculate about what the 2 clerk might or might not do. There would be no way for the 3 clerk to know that the person had entitlement to see it, I 4 think would probably be the answer to that question. How 5 would the clerk know that this person had a right to see 6 this. 7 Q. I would think if their name was on it. 8 A. Their name wouldn't be on it. It would be in the 9 interest of baby boy. 10 Q. Well, unborn child. You don't necessarily know if 11 it's a boy, do you? I mean. 12 A. Or baby girl or whatever. 13 Q. Okay. 14 A. Unborn baby something. 15 Q. All right. 16 A. However it would be. I would be surprised if the 17 clerk would do that. 18 Q. But as far as you are aware, there's no specific 19 statute precluding an expectant mother from knowing that 20 there is a prognostic detention order entered that will 21 result in her child being taken upon birth. 22 A. No, there's no statute that says that. 23 Q. And is there any rule of Court? 24 A. There are no dependency rules of Court, so. 25 Q. All right. What is the reason those orders are</p>	<p style="text-align: right;">19</p> <p>1 A. Correct. 2 Q. So there's no analysis that's performed prior to 3 presenting this order to determine whether or not this 4 particular parent represents a risk that they're going to 5 abscond or have the baby at home or bear the child under 6 some circumstances that would be particularly dangerous? 7 A. Yes, there most certainly would be. 8 Q. In every case? 9 A. There would be an -- well, that would be a factor 10 that would be considered. 11 Q. Okay. And is that a prerequisite to a prognostic 12 detention order? 13 A. In every case, I wouldn't say necessarily, no. 14 But it would be -- it would be a factor that would be looked 15 at by the caseworker and/or the casework supervisor and/or 16 the Court, I would suspect, in determining the level of risk 17 to the child and the propriety of entering the order. 18 Q. Is there a policy at the Erie County Office of 19 Children and Youth regarding the seeking of a prognostic 20 detention order in cases where a mother has one or more 21 children already in placement and becomes pregnant? 22 A. Regarding whether to seek an order? 23 Q. Um-hum. 24 A. I wouldn't say there's a policy, per se. 25 Q. Is there a practice?</p>
<p style="text-align: right;">18</p> <p>1 presented ex parte? 2 A. Well, you don't want the parent to know that you 3 are seeking permission to remove the child at birth to 4 ensure the child's safety. Because if you tip them off in 5 advance and allow them the opportunity to abscond with the 6 child, you, therefore, have defeated your entire purpose of 7 protecting the child. 8 Q. And are you saying that in every case where a 9 prognostic detention order is requested ex parte there is 10 evidence that it is likely that the parent will abscond or, 11 is the mere possibility sufficient in your mind to justify 12 presenting that ex parte? 13 A. Well, I'm not necessarily talking about 14 absconding. I'm talking about, you know, behaving in a way 15 that somehow would enhance the risks of a child. Absconding 16 is one part of it. You know, having the child at home as 17 opposed to a hospital is another part of it. That has -- 18 you know, that happens. I think every case gets looked at 19 individually in terms of evaluating the level of risk that 20 is presented as to the child. 21 Q. If the child is born at home, the order would 22 still apply, correct? 23 A. Correct. Correct. 24 Q. And the child would be taken once its existence 25 was known.</p>	<p style="text-align: right;">20</p> <p>1 A. Well, the practice is that if a parent who already 2 has children who have been determined to be dependent, and 3 they cannot be safely in the care of that parent, for 4 whatever reason, if the parent then is pregnant, the 5 practice would be to evaluate the level of risk to the 6 unborn child that that parent either presents currently, for 7 example, because of maybe ongoing drug or alcohol abuse, or, 8 you know, in the future at the time of birth. And the 9 practice is just an evaluation of that circumstance. 10 Q. In what percentage of cases under those 11 circumstances I described where a woman has a child in 12 placement and becomes pregnant is a prognostic detention 13 order sought, in your experience? 14 A. You know, I don't think I can tell you a 15 percentage, Mr. McNair. I think it would be just 16 speculation entirely on my part. What I can tell you is 17 that the practice would be that the ongoing caseworker where 18 the caseworker was aware that the -- and we're talking here 19 the mother would be pregnant, you know, would be assessing 20 how her circumstances might impact the safety of the child 21 at birth. 22 Q. So that's a decision that would be made by the 23 caseworker on a case-by-case basis? 24 A. Well, initially by the caseworker. And then, you 25 know, ultimately by the caseworker and the supervisor. And</p>

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<p style="text-align: right;">21</p> <p>1 then possibly, you know, depending on what they determine, 2 some input from the legal department. 3 Q. Okay. 4 A. Or at least advice from the legal department. 5 Q. If there were a perception that it is the practice 6 of the Office of Children and Youth to seek a prognostic 7 detention order in every case where a pregnant woman already 8 has a child in placement, would that perception be 9 inaccurate, grossly inaccurate, or accurate? 10 A. You're asking me to answer a question based on an 11 assumption that I would know about every case where a woman 12 who was pregnant had kids in care and what evaluations 13 caseworkers and supervisors made about every one of those 14 cases. I don't think I can do that. You know, the idea 15 that in every case -- 16 Q. So you can't dispute the accuracy of that 17 perception, right? 18 MR. JOYAL: I'm going to object to the form of the 19 question. 20 MR. McNAIR: What's the problem with the form of 21 that question? 22 MR. JOYAL: It's argumentative. 23 MR. McNAIR: No, it's not. 24 MR. JOYAL: Whose perception are you talking 25 about? Hers? Or are you talking about generally</p>	<p style="text-align: right;">23</p> <p>1 A. You know, I couldn't tell you. Because I don't 2 know how many times caseworkers and casework supervisors 3 made a determination not to come to a lawyer and say, we 4 want a prognostic detention order. So I don't know. 5 There's no way for me to answer that. 6 Q. Well, how about this. In every case where there 7 is an order of dependency entered and there's been a 8 dispositional hearing and a child has been placed, there are 9 thereafter periodic review hearings with the Court. 10 A. Um-hum. 11 Q. And at those review hearings, the Court is advised 12 of any changes in the circumstances of the case. And it is 13 true, is it not, that if a woman is expecting, that that 14 fact would be made known to the Court at any review hearing 15 that occurred prior to her delivering that child, any review 16 hearing relative to another child. 17 A. Yeah, more likely than not that would be true. 18 Q. That would be a fact that would affect that 19 mother's ability to care for children in some regard. 20 A. Sure. 21 Q. Okay. And the fact that the mother had given 22 birth to another child would also be a fact that would be 23 presented at a review hearing on a petition involving any of 24 her other children. 25 A. Sure.</p>
<p style="text-align: right;">22</p> <p>1 in the legal community? Or in social workers? Or 2 within the world? 3 MR. McNAIR: Okay. I understand. 4 MR. JOYAL: Why don't you stop arguing with him 5 and give him a foundation for the question. 6 MR. McNAIR: Thank you. Your objection is stated. 7 MR. JOYAL: Thank you. 8 BY MR. McNAIR: 9 Q. You are telling me, then, that you don't have any 10 basis to tell me whether such a perception would be accurate 11 or inaccurate. 12 A. Well, I can tell you what my perception is. And 13 my perception is that, as far as I know, there's not an 14 across-the-board rule or practice that this happens in every 15 case. That these cases get evaluated case by case. And 16 that these detention orders are sought from the Court when 17 it's felt to be appropriate to do it. You know, whatever 18 the percentage may be. 19 You know, I can't -- and I wouldn't speak to 20 anybody else's perception about it. I'm just telling you 21 what my experience of, I don't know, 17 or 18 years' worth 22 of work in there taught me. 23 Q. And in those 17 or 18 years, how many cases are 24 you aware of where a woman under those circumstances has not 25 had a prognostic detention order issued for the child?</p>	<p style="text-align: right;">24</p> <p>1 Q. Do you recall any cases in those 18 years where 2 the Court was informed that the mother gave birth to another 3 child, has custody of that child, at the review hearing for 4 another child who was in placement? 5 A. Sure. 6 Q. How many times did that happen? 7 A. Oh, I couldn't tell you. Numerous. You know, 8 there may be a lot of reasons why a mother can't care for a 9 particular child who is in placement that doesn't have 10 anything -- that wouldn't have anything to do with her 11 ability to care for a newborn. 12 Q. So the determination, then, is made based on the 13 mother's ability to care for a newborn rather than her 14 pattern of being abusive or neglectful to other children. 15 A. No. No. The determination about seeking a 16 prognostic detention order is made on the basis of whether 17 or not the mother has demonstrated by her behavior that she 18 presents a level of risk to the child that is simply not 19 acceptable, wouldn't be safe to keep the child with the 20 mother. 21 Q. Did you represent the Agency in a case in which 22 Abby Conley was a case aide involving a pair of twins, a boy 23 and a girl? 24 A. Yeah. 25 Q. Do you recall the case?</p>

7 (Pages 25 to 28)

<p style="text-align: right;">25</p> <p>1 A. Not a boy and a girl. They were two girls.</p> <p>2 Q. Two girls, okay. But you recall the case, then?</p> <p>3 A. Yes, sir.</p> <p>4 Q. All right. And you represented the Agency at a</p> <p>5 hearing on a petition that was -- the Agency filed to change</p> <p>6 the goal of the placement; is that correct?</p> <p>7 A. Yeah, that's true.</p> <p>8 Q. And the change of goal was to change it from</p> <p>9 reuniting the family to terminating the parental rights of</p> <p>10 the parents.</p> <p>11 A. Correct.</p> <p>12 Q. And who was the caseworker that made that</p> <p>13 determination, that requested you to file that petition?</p> <p>14 A. Well, there wasn't -- I want to be technical here</p> <p>15 with you for a minute. There wasn't really a petition</p> <p>16 filed. There was a -- there was a hearing held, which was a</p> <p>17 periodic review hearing, at which the Agency indicated in</p> <p>18 its court filings, which is not a petition, but it was</p> <p>19 in the casework summary that was prepared, that the Agency</p> <p>20 wanted to change the goal from reunification with parents to</p> <p>21 adoption. And the caseworker who was assigned to the case</p> <p>22 during that period of time was a lady named Michelle</p> <p>23 Schetter, S-C-H-E-T-T-E-R.</p> <p>24 Q. And do you know if she is still with the Agency?</p> <p>25 A. I think so, but I can't swear to it, because I</p>	<p style="text-align: right;">27</p> <p>1 required to submit in advance a statement of what it is</p> <p>2 you're seeking and why you're seeking it?</p> <p>3 A. There's no requirement. Again, as I mentioned to</p> <p>4 you before, there are no rules, Mr. McNair, that govern</p> <p>5 dependency practice. You know, there aren't any Court rules</p> <p>6 like the Rules of Criminal Procedure. They're in the</p> <p>7 process of promulgating them through the Supreme Court now,</p> <p>8 but there's basically just a practice. What we've done</p> <p>9 historically for years in Erie County.</p> <p>10 Q. In this particular case, had any parties other</p> <p>11 than the Agency submitted a pretrial or prehearing</p> <p>12 statement?</p> <p>13 A. I believe so. I can't specifically recall who,</p> <p>14 but I believe that some folks had. I think Attorney</p> <p>15 Villella had on behalf of the mother. I don't know whether</p> <p>16 any of the other parties had, to be honest with you. I</p> <p>17 can't remember.</p> <p>18 Q. Do you recall that Villella submitted such a</p> <p>19 statement?</p> <p>20 A. Yeah.</p> <p>21 Q. Do you recall what relief he was seeking in that</p> <p>22 hearing; what he wanted to accomplish at that review hearing</p> <p>23 for his particular client?</p> <p>24 A. Well, not -- I don't recall specifically. I mean,</p> <p>25 I haven't -- I haven't probably looked at that document in</p>
<p style="text-align: right;">26</p> <p>1 haven't been there for a couple months. As far as I know,</p> <p>2 she is.</p> <p>3 Q. And who was her supervisor?</p> <p>4 A. Susan Deveney.</p> <p>5 Q. And Abby Conley was the case aide?</p> <p>6 A. That's my understanding.</p> <p>7 Q. Is there normally just one case aide assigned to a</p> <p>8 case?</p> <p>9 A. I think normally. Sometimes there are --</p> <p>10 sometimes there are two, depending on the circumstances of</p> <p>11 the case and the amount of service that's involved. But I</p> <p>12 think in this case there was only the one, as I remember.</p> <p>13 Q. Now, you talked about a summary, a submission that</p> <p>14 was submitted to the Court in advance of this review</p> <p>15 hearing; is that correct?</p> <p>16 A. It's submitted to the Court, and it's submitted to</p> <p>17 counsel for the Agency, counsel for the parents, counsel for</p> <p>18 the child or children.</p> <p>19 Q. Okay. And do the other parties likewise file a</p> <p>20 pretrial statement or a summary indicating what evidence</p> <p>21 they want to present at this particular hearing?</p> <p>22 A. Any party has the right to be able to do that.</p> <p>23 Some do, some don't. It depends on the case.</p> <p>24 Q. If you want to present evidence or request some</p> <p>25 relief from the Court of a substantive nature, are you</p>	<p style="text-align: right;">28</p> <p>1 almost two years, a year and a half, anyway, I would think.</p> <p>2 I would -- I would assume that he was objecting to the</p> <p>3 Agency's request to change the goal from reunification.</p> <p>4 Q. And what kind of evidence do you have to submit to</p> <p>5 the Court to convince the Court to enter an order changing</p> <p>6 the goal and starting the termination of parental rights</p> <p>7 proceedings?</p> <p>8 MR. LANZILLO: Objection to form.</p> <p>9 MR. LANE: Join in that.</p> <p>10 MR. McNAIR: What's your objection to the form?</p> <p>11 MR. LANZILLO: First, I don't know whether you're</p> <p>12 talking about now or then. And if you're asking</p> <p>13 him essentially for the offer of proof, that would</p> <p>14 have been made at the time of the hearing. It's</p> <p>15 just unclear what you're looking for from him</p> <p>16 here.</p> <p>17 MR. LANE: Mine is that the question is overly</p> <p>18 broad.</p> <p>19 BY MR. McNAIR:</p> <p>20 Q. What I'm asking is, in general, is there some case</p> <p>21 law or statute that sets forth the nature of proof or the</p> <p>22 ultimate facts that have to be found by a Court to change</p> <p>23 the goal of a placement?</p> <p>24 A. Well, there's a couple different ways to answer</p> <p>25 that. First, there's a very specific statutory provision</p>

8 (Pages 29 to 32)

<p style="text-align: right;">29</p> <p>1 that governs the direction that a dependency case has to go 2 in.</p> <p>3 When the federal government enacted the Adoption 4 and Safe Families Act that was ultimately enacted in our 5 Juvenile Law in 1999, states were required to put provisions 6 in their law that said that if a child had been adjudicated 7 dependent and placed in foster care, and had remained in 8 foster care for 15 out of the last 22 consecutive months, 9 and the Agency was unable to document a compelling reason 10 not to seek termination of parental rights, the Agency was 11 required to file a petition to terminate parental rights in 12 order to ensure a safe, permanent arrangement for the child 13 or children.</p> <p>14 So that's the ASFA provision that was overlaid on 15 our Juvenile Act that would have required the Agency to take 16 that action in this particular case.</p> <p>17 Q. I don't mean to interrupt you. But you're saying 18 that in the case that we're speaking of, that the two twin 19 girls had been in placement for 15 out of the previous 22 20 months.</p> <p>21 A. Correct.</p> <p>22 Q. Okay.</p> <p>23 A. And the Agency had no compelling reason that it 24 could advance to the Court to do otherwise than what the 25 statute mandated. So you have that piece of it. Then to</p>	<p style="text-align: right;">31</p> <p>1 A. You know, I could answer that question the rest of 2 the day, you know, or I could try.</p> <p>3 Q. I'll withdraw that particular question.</p> <p>4 A. Thanks. Let's try another one. I'll try to help 5 you.</p> <p>6 Q. Okay. Going into that hearing, it was your 7 intention to demonstrate to the Court that one or both or 8 that both of the parents had not made progress toward 9 remedying the conditions that led to the placement; is that 10 correct?</p> <p>11 A. In part. The Agency's position was that they had 12 not sufficiently demonstrated that they would be able to 13 provide a safe environment for the children. So in the 14 sense that they may have done certain things and attended 15 certain classes and so forth, that was one thing. But the 16 gist of the Agency's concern was that there hadn't been 17 sufficient progress that would allow us to say that we had a 18 compelling reason not to seek termination of parental 19 rights.</p> <p>20 Q. Now, when you say "the Agency's concern," how is 21 the Agency's concern determined?</p> <p>22 A. The Agency's concern from the outset in this case 23 was that these children, who were about 2 months of age --</p> <p>24 Q. Wait a minute. I apologize. I don't mean to 25 interrupt you. But I'm not sure you understood my question.</p>
<p style="text-align: right;">30</p> <p>1 further answer your question, you would have to convince the 2 Court essentially that the parents were not -- had not 3 sufficiently progressed to the point where they remedied the 4 conditions that gave rise to the placement in the first 5 case.</p> <p>6 Q. So those were the issues that were going to be 7 presented at this particular review/change of goal hearing, 8 then.</p> <p>9 A. Well, that was the -- those were the -- those were 10 the underlying factors.</p> <p>11 Q. Who would have the burden of proof on this 12 compelling reason issue, the Agency or the parent?</p> <p>13 A. Can you be more specific.</p> <p>14 Q. Well, does the statute set forth who bears the 15 burden of proving a compelling reason not to terminate?</p> <p>16 A. What the statute says is that if the Agency cannot 17 document a compelling reason when the child has been in 18 placement more than 15 out of the last 22 months.</p> <p>19 Q. Okay.</p> <p>20 A. Then it has to file to terminate parental rights.</p> <p>21 Q. Does the Agency have a choice of what it documents 22 in a file?</p> <p>23 MR. LANZILLO: Objection to form. Overbroad.</p> <p>24 A. I'm going to second the objection.</p> <p>25 Q. Okay. If you can't answer --</p>	<p style="text-align: right;">32</p> <p>1 A. All right.</p> <p>2 Q. Let me restate it. When you refer to the Agency's 3 concern, who was the Agency? The Office of Children and 4 Youth.</p> <p>5 A. Sure.</p> <p>6 Q. Which is inanimate and doesn't have any corporeal 7 existence. So how does it form this determination?</p> <p>8 A. You're talking about the people who are employed 9 by the Agency who make the judgments about what's going on 10 with the case. And in this case, you're talking about 11 the -- first and foremost the caseworker, to include the 12 casework supervisor, to include the program director who 13 would be the supervisor's supervisor. That's pretty much as 14 far as it goes on the issue of changing a goal from 15 reunification to termination of parental rights.</p> <p>16 Q. All right. And do they typically seek a legal 17 opinion in connection with that determination?</p> <p>18 A. Sure.</p> <p>19 Q. To determine whether the evidence is sufficient?</p> <p>20 A. Sure. The practice is that there is a clinical 21 review that's done by those people that I talked to you 22 about, those three, to assess the case from a clinical 23 standpoint, to determine whether or not there's anything 24 else that can be done or should be done to try to assist the 25 family to remedy the conditions which caused the placement</p>

<p style="text-align: right;">33</p> <p>1 in the first instance.</p> <p>2 And if the determination is made at that point</p> <p>3 that there's -- you know, there's no progress being made and</p> <p>4 that the child needs permanency, as opposed to lingering in</p> <p>5 foster care, which was going on with these children. Once</p> <p>6 that determination is made clinically, then a legal opinion</p> <p>7 would be sought to determine if there were adequate legal</p> <p>8 grounds to proceed.</p> <p>9 Q. All right.</p> <p>10 A. That's the protocol that we set up to assess these</p> <p>11 cases.</p> <p>12 Q. Okay. Thank you. That answers the question. I</p> <p>13 apologize for the previous confusion.</p> <p>14 A. That's all right.</p> <p>15 Q. And then once that determination is made after</p> <p>16 those two steps, that becomes the Agency's position.</p> <p>17 A. Right. That would be the position that would</p> <p>18 be -- would be offered on behalf of the Agency as the party.</p> <p>19 The Agency is the Erie County Office of Children and Youth</p> <p>20 as the moving party, yeah.</p> <p>21 Q. And that was done in this case.</p> <p>22 A. Sure.</p> <p>23 Q. And who provided the legal opinion in this case,</p> <p>24 if you know?</p> <p>25 A. That would be me.</p>	<p style="text-align: right;">35</p> <p>1 Q. Did you in the case that we're speaking of?</p> <p>2 A. I really can't recall whether I reviewed documents</p> <p>3 or not. I may have.</p> <p>4 Q. Do you review the case file itself?</p> <p>5 A. Not normally.</p> <p>6 Q. Do you review the -- you don't review, then, the</p> <p>7 caseworker's notes that are in the file or the aide's notes</p> <p>8 or the supervisor's notes?</p> <p>9 A. No. No. I would look at past Court summaries,</p> <p>10 for example, reports that might have been generated maybe</p> <p>11 between the time of the last hearing and this next scheduled</p> <p>12 proceeding at which this recommendation might or might not</p> <p>13 be made.</p> <p>14 Q. All right. Now, okay. And, nonetheless, in this</p> <p>15 case, that determination was made to proceed with the</p> <p>16 request to the Court to change the goal. And the Court</p> <p>17 summary was prepared, Court summaries were prepared; is that</p> <p>18 correct?</p> <p>19 A. Yeah, I believe so. And, you know, without</p> <p>20 looking at -- and it's been a long time since I've seen</p> <p>21 these, Mr. McNair. My recollection is there was a hearing</p> <p>22 that was scheduled on this case in April of '04, at which we</p> <p>23 may or may not have recommended a goal change. I can't</p> <p>24 remember.</p> <p>25 And I think the case was put off at that point</p>
<p style="text-align: right;">34</p> <p>1 Q. Did you provide that legal opinion after reviewing</p> <p>2 the documents that were considered in connection with the</p> <p>3 clinical determination? And by that I mean the summaries</p> <p>4 that were prepared by the caseworker and the other people</p> <p>5 involved in the case.</p> <p>6 A. Probably not, to be honest with you. Typically,</p> <p>7 the legal opinion is sought in advance of the preparation of</p> <p>8 the summary.</p> <p>9 Q. Okay.</p> <p>10 A. Because it is the summary which then contains the</p> <p>11 ultimate recommendation. So the summary is -- the work</p> <p>12 product that's generated there is predicated on the fact</p> <p>13 that there's been the clinical review, and there's been the</p> <p>14 legal evaluation made of the case. Which is not to say that</p> <p>15 I wouldn't have been made aware of what was going on as a</p> <p>16 predicate for the legal opinion.</p> <p>17 Q. And how would you be made aware of that? Through</p> <p>18 oral conversation with the caseworker --</p> <p>19 A. Sure.</p> <p>20 Q. -- or supervisor?</p> <p>21 A. Right.</p> <p>22 Q. And would you typically review documents in</p> <p>23 conjunction with that review?</p> <p>24 A. Possibly. Typically, I don't know typically. But</p> <p>25 possibly, for sure.</p>	<p style="text-align: right;">36</p> <p>1 because the mother had a re-argument petition or an</p> <p>2 allocatur petition pending in the appellate courts from her</p> <p>3 dependency case, and the Judge didn't want to address it at</p> <p>4 that point. And we came back after the appellate</p> <p>5 proceedings had run its course, and that's when the hearing</p> <p>6 happened at the end of July of '04.</p> <p>7 Q. Okay.</p> <p>8 A. And so -- this is just by recollection. So don't</p> <p>9 hold me to when the goal change recommendation was</p> <p>10 formalized in a summary, because I can't -- I don't want to</p> <p>11 say for sure.</p> <p>12 Q. All right.</p> <p>13 A. It might have been April. It probably was July.</p> <p>14 If it wasn't April, it might have been both. I just don't</p> <p>15 recall.</p> <p>16 Q. Was a new Court summary prepared, do you know,</p> <p>17 after the April one, the one that was prepared for the April</p> <p>18 hearing? Was there a new one prepared for the July 28th</p> <p>19 hearing?</p> <p>20 A. I don't think so. I think there might have been</p> <p>21 an addendum done to it, which would have been kind of</p> <p>22 standard fare. I can't specifically recall.</p> <p>23 Q. All right. And did you review the summary that</p> <p>24 was submitted by the case aide Abby Conley for the hearing,</p> <p>25 the April hearing?</p>

10 (Pages 37 to 40)

<p style="text-align: right;">37</p> <p>1 A. Yeah, I probably -- I probably did. Because it 2 would have come to me in the packet of information that I 3 would get in advance of that hearing. That was the 4 practice. 5 Q. Okay. 6 A. If there was something that went to the other 7 parties, I would get what they got. 8 Q. And do you recall whether or not the information 9 in the case aide's summary was consistent with or at 10 variance with the position of the Agency? 11 A. I don't -- you know, I don't really know how to 12 answer that. I mean, she was the case aide. She wrote 13 about what her observations were at visits, which I think is 14 what her function was, to supervise visitation. I don't 15 recall that she took a position one way or the other -- 16 Q. Right. 17 A. -- on the recommendation that the Agency made to 18 change the goal. 19 Q. Right. And I didn't ask you if she had a 20 position. I asked you if the information she submitted was 21 consistent with the Agency's position or not. 22 MR. JOYAL: How is he going to answer that? 23 Q. Well, whether there was any dissonance between the 24 facts that she stated and the facts that the other Agency 25 people were stating.</p>	<p style="text-align: right;">39</p> <p>1 it was, you know, she had reviewed the summary and she had 2 asked Abby to make some changes in it. And Abby had made 3 some changes in it, and then turned in, you know, the final 4 product. I mean, that would be -- that's not uncommon. 5 Q. Okay. 6 A. You know. 7 Q. All right. And -- 8 A. But, you know, in terms of the particulars of it, 9 I didn't get into it with her. 10 Q. Do you know whether the summary that was submitted 11 and signed by Ms. Conley was subsequently modified? 12 A. Do I know? 13 Q. Yes. 14 A. From my own personal knowledge? 15 Q. Do you have any basis to know? 16 A. I mean, not from my own personal knowledge but 17 from -- 18 Q. I assume you didn't participate in it. 19 A. But from what I've learned, I'm given to 20 understand that the summary that Ms. Conley -- the second 21 summary, if you will, the corrected version that she 22 prepared, and signed, and that Ms. Deveney signed, was not 23 changed after that by Ms. Deveney. 24 Q. And what's the basis of that understanding? 25 A. After Ms. Conley's resignation and in connection</p>
<p style="text-align: right;">38</p> <p>1 A. I can't recall one way or the other. You know, I 2 mean without -- 3 Q. All right. That's fair. 4 A. If there's something in particular that you had in 5 mind that you want me to speak to, that would be fine, I 6 would try, but, you know. 7 Q. Did you at any point request that the case aide's 8 summary be resubmitted to the case aide for revision? 9 A. No. No, I would never do that. It wasn't my 10 function. 11 Q. Do you know whether either the supervisor or the 12 caseworker requested the case aide to revise the summary? 13 A. Do I now, as we sit here today? 14 Q. Do you now know? 15 A. I'm aware that there was some discussion 16 apparently between the supervisor and the case aide that 17 revisions should be made. 18 Q. Okay. And when did you learn that? 19 A. I think probably either during the course of the 20 hearing on the 28th of July or right afterwards. 21 Q. What was your understanding of that discussion? 22 A. Well, I -- you know, I heard what Ms. Conley 23 testified to during the course of the hearing. And then I 24 spoke to Ms. Deveney about it. And, you know, she basically 25 told me the scenario. I don't specifically recall it, but</p>	<p style="text-align: right;">40</p> <p>1 with her civil service appeal, the County retained counsel 2 to represent the County on that issue. And that was 3 Mr. Taft. And as I understand it, he reconstructed the 4 chain of documentation between Ms. Conley and Ms. Deveney 5 and their respective computers, and was able to demonstrate 6 that that's how it went down. 7 In other words, that Ms. Deveney did not, after 8 the fact of signature by Ms. Conley, alter anything. Now, 9 I've never sat down and looked at that, but that's what I've 10 understood to be the case. 11 Q. That there's some forensic computer evidence 12 indicating this. 13 A. I'm not going to characterize it. I'm just 14 telling you what I was told. 15 MR. LANZILLO: I would like to caution Attorney 16 Cauley that to the extent there was consultation 17 involving Attorney Taft in your capacity as 18 Solicitor and Attorney Taft representing the 19 County for purposes of the civil service 20 proceeding, to be cautious regarding work product 21 privilege and attorney/client privilege in 22 disclosing -- 23 MR. McNAIR: There's no work product privilege in 24 the civil service proceeding. There's no state 25 work product privilege.</p>

11 (Pages 41 to 44)

<p style="text-align: right;">41</p> <p>1 MR. LANZILLO: My objection stands. And to the 2 extent that you're going to -- you perceive that 3 the question calls for disclosure of those 4 consultations, I would ask that you alert me to 5 that before answering so that I can make a 6 determination as to whether it's appropriate to 7 disclose the information. 8 THE WITNESS: Okay. 9 Q. Did Ms. Deveney tell you that she had not altered 10 the Court summary, but that Abby is the one that made the 11 changes to the Court summary, the ones that were discussed 12 at that July 28th hearing? 13 A. That's a two-part question. The first -- the 14 answer to the first part of the question is she told me she 15 did not alter the summary. The second part of the 16 question -- would you mind reading that back. 17 (Record read by reporter.) 18 A. I don't think we -- I don't think I had the second 19 part of that discussion with Ms. Deveney in the way you 20 phrased the question. 21 Q. So you don't know who -- I withdraw that. At that 22 hearing there was basically two versions of the case aide's 23 summary that were submitted and compared, correct? 24 A. Two versions surfaced, yes. 25 Q. Okay.</p>	<p style="text-align: right;">43</p> <p>1 Your client is denying it. 2 A. Wait a minute. 3 Q. And you don't object to the authenticity? 4 MR. LANZILLO: Objection to form. 5 MR. JOYAL: Argumentative. 6 MR. LANZILLO: And lack of foundation. 7 MR. McNAIR: You're right. 8 A. He showed it to her, to Ms. Conley. 9 Q. Ms. Conley authenticated it? 10 A. She identified it as something that she had 11 produced. 12 Q. Did she identify it as the Court summary that she 13 had signed and submitted to Ms. Deveney? 14 A. I don't specifically recall how she characterized 15 it. She said that she had produced it, but I -- you know, I 16 think the transcript would answer that more specifically 17 than I could from my recollection. It's been over a year 18 since I even read that, Mr. McNair. 19 Q. Okay. And did Ms. Deveney testify at that hearing 20 that the summary submitted to the Court was the same one 21 that Ms. Conley had prepared and signed? 22 A. You know, I don't remember exactly what she said. 23 You know, the transcript is probably the best answer to 24 that. The gist of her testimony was that the summary that 25 was submitted to the Court and the parties in advance of the</p>
<p style="text-align: right;">42</p> <p>1 A. The Agency had offered the one that went to the 2 Court and all the parties as part of its standard packet of 3 materials. And then there was another version that 4 Mr. Vilella produced. 5 Q. Mr. Vilella produced that? 6 A. That's my recollection. 7 Q. Where did he produce it from? 8 A. He had it. 9 Q. He had it? 10 A. Yes, sir. 11 Q. Did he offer it as an exhibit? 12 A. He showed it to Ms. Conley when she was on the 13 stand. And I believe that he did offer it as an exhibit. 14 Q. Have you reviewed the transcript of that hearing? 15 A. Not in a long time. 16 Q. All right. 17 A. That's just my recollection, Mr. McNair. I 18 believe -- my recollection, as I sit here, is that -- is 19 that he had it in his possession, and he brought it up to 20 Ms. Conley and showed it to her. That's my recollection. 21 Q. All right. Did you object at that time to the 22 authenticity of that document? 23 A. No. 24 Q. Your opposing counsel produces a document at a 25 hearing claiming it's a document generated by your client.</p>	<p style="text-align: right;">44</p> <p>1 hearing was the summary that had been prepared by herself 2 and Ms. Conley, you know, as the supervisor and the -- and 3 the case aide. 4 I believe Ms. Deveney may have explained that she 5 had asked Ms. Conley to revise the summary, or maybe 6 Ms. Conley admitted that that had happened. Now that I 7 think about it, I think Ms. Conley acknowledged that she had 8 made some changes at Ms. Deveney's request, that that was 9 customary, and that she had no problem with that, something 10 to that effect. 11 But, again, Mr. McNair, that's my recollection. 12 And, you know, the transcript would answer your question 13 more specifically about what Sue said. 14 Q. Do you recall whether or not that issue had any 15 bearing on the outcome of the hearing? 16 A. I think you've got to ask Judge Kelly that. 17 Q. I'm asking you from your position as an attorney 18 representing a litigant. In your mind, do you think that 19 had an impact on the outcome of the hearing? Well, first of 20 all, what was the outcome of the hearing? Change of goal, 21 or? 22 A. No. The Agency was directed to continue the 23 service plan of reunification for the children. 24 Q. Okay. And did this document, these varying 25 documents that were produced, in your mind, were they a</p>

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<p style="text-align: right;">45</p> <p>1 factor that influenced the Court to rule that way?</p> <p>2 A. I have no idea what prompted Judge Kelly to make</p> <p>3 the determination that she made in that case. So to be able</p> <p>4 to say yes, no, or maybe, I'm not -- I can't go there with</p> <p>5 you, Mr. McNair.</p> <p>6 Q. Did the Judge not make a statement of the reasons</p> <p>7 for her rule?</p> <p>8 A. You know, I really don't recall. If she did, they</p> <p>9 would be a matter of record. And I don't recall that she</p> <p>10 did or didn't.</p> <p>11 Q. Well, do you recall after that hearing having a</p> <p>12 discussion with the Judge?</p> <p>13 A. Well, I talked to her a lot after the hearing</p> <p>14 about many things.</p> <p>15 Q. Immediately after that hearing did you have a chat</p> <p>16 with the Judge about the Agency altering documents that had</p> <p>17 been signed and submitted by other workers?</p> <p>18 A. Oh, no, not that I recall. I don't believe so.</p> <p>19 Q. Do you recall the Judge telling you that in her</p> <p>20 opinion she felt that that was an obstruction of justice</p> <p>21 subject to possible criminal penalties?</p> <p>22 A. Oh, if Judge Kelly had ever told me that, I would</p> <p>23 remember that, Mr. McNair. That never happened.</p> <p>24 Q. I think you would. Never happened.</p> <p>25 A. Not that I recall.</p>	<p style="text-align: right;">47</p> <p>1 document as was alleged by the case aide?</p> <p>2 A. She has told me that. I don't know if it was in</p> <p>3 that -- in the first meeting I ever had with her. I would</p> <p>4 have to -- you know, I could speculate. But, you know, I</p> <p>5 really can't recall.</p> <p>6 Q. What is the first time that you recall that she</p> <p>7 told you that she did not make the alterations as Ms. Conley</p> <p>8 alleged?</p> <p>9 A. To put a specific time line or date on it, you</p> <p>10 know, I really couldn't say. I don't know.</p> <p>11 Q. Was it within days --</p> <p>12 A. Oh, yeah.</p> <p>13 Q. -- weeks, months?</p> <p>14 A. It would have been within days, I'm sure.</p> <p>15 Q. Was there any documentation or memorandum made of</p> <p>16 that conversation?</p> <p>17 A. Not by me.</p> <p>18 Q. Was there an e-mail back and forth between you and</p> <p>19 Ms. Deveney about that issue?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Was there any report submitted to management about</p> <p>22 this issue?</p> <p>23 A. Define "management."</p> <p>24 Q. The program director or supervisor --</p> <p>25 A. No.</p>
<p style="text-align: right;">46</p> <p>1 Q. Well, you said you would recall it if it had</p> <p>2 happened.</p> <p>3 A. Oh, I would have to think I would.</p> <p>4 Q. Do you know whether she had a similar discussion</p> <p>5 with any of the Agency personnel?</p> <p>6 A. No, I don't have any idea.</p> <p>7 Q. None of the Agency personnel reported to you later</p> <p>8 that the Judge had --</p> <p>9 A. No. I never heard --</p> <p>10 Q. -- talked to them in that vein?</p> <p>11 A. I never heard that.</p> <p>12 Q. Now, when did you discuss the question of the</p> <p>13 alteration of the Court summary with Ms. Deveney for the</p> <p>14 first time after that hearing?</p> <p>15 A. You know, I don't specifically recall. Probably</p> <p>16 within the next -- within the next couple of days, I would</p> <p>17 think.</p> <p>18 Q. Do you recall where that discussion took place?</p> <p>19 A. Not specifically. I could speculate. But it</p> <p>20 would have been at the Agency someplace, possibly in my</p> <p>21 office, maybe in the hallway. You know, it's hard to say.</p> <p>22 Q. And what did she tell you in the course of that</p> <p>23 discussion?</p> <p>24 A. I really don't recall.</p> <p>25 Q. Did she tell you that she had not altered the</p>	<p style="text-align: right;">48</p> <p>1 Q. -- up the line from Ms. Deveney.</p> <p>2 A. No.</p> <p>3 Q. Were the supervisors and management of OCY</p> <p>4 generally aware of this occurrence? Was it a topic of</p> <p>5 conversation?</p> <p>6 A. What occurrence?</p> <p>7 Q. Where you had a case aide disputing the</p> <p>8 authenticity of a document submitted to Court.</p> <p>9 MR. LANE: Objection to form.</p> <p>10 A. I think the way to answer that is that there was</p> <p>11 discussion about the circumstance of the hearing itself with</p> <p>12 the supervisor, program director, maybe. Don't hold me to</p> <p>13 that. Ms. Biroszak may or may not have been involved in</p> <p>14 that. I can't specifically recall. And at some point with</p> <p>15 the director of the Agency also, about the overall</p> <p>16 circumstances of that hearing. Which would have included,</p> <p>17 at least in part, what Ms. Conley had said.</p> <p>18 Q. Okay.</p> <p>19 A. That within days probably of the hearing.</p> <p>20 Q. Sometime in the first week of August, then?</p> <p>21 A. Oh, yeah, if not sooner.</p> <p>22 Q. And discussions prompted by the circumstances of</p> <p>23 that hearing.</p> <p>24 A. Correct.</p> <p>25 Q. And was any action planned or contemplated? Did</p>

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<p style="text-align: right;">49</p> <p>1 the Agency plan on making any changes in its procedures, 2 personnel policies, whatever, as a result of the events of 3 that hearing?</p> <p>4 MR. LANZILLO: Objection to form. Vague and 5 ambiguous, overly broad.</p> <p>6 A. Yeah, that would be a hard one for me to try to 7 nail down. If you could be more specific.</p> <p>8 Q. Well, I think it's a fair question. Did the 9 Agency decide to change anything it was doing as a result of 10 this -- the events of that hearing and the circumstances?</p> <p>11 MR. LANZILLO: I'm still going to object to the 12 form, particularly the reference to events of that 13 hearing.</p> <p>14 MR. McNAIR: The witness referred to the 15 circumstances of the hearing. Allow me to 16 rephrase the question.</p> <p>17 Q. Did the Agency decide to change any of its 18 policies or personnel or procedures as a result of the 19 circumstances of the July 28th hearing?</p> <p>20 MR. JOYAL: I'm going to object. It's a compound 21 question and not set up in time. You've got 22 policies, procedures, personnel, without a time 23 frame or who you're talking about. I'm going to 24 object.</p> <p>25 Q. Ever at any time after July 28th.</p>	<p style="text-align: right;">51</p> <p>1 The transcript speaks more clearly to that than my 2 recollection could at this point. So those -- those things 3 around the circumstances of that hearing were discussed 4 within the Agency after that hearing.</p> <p>5 Q. Okay.</p> <p>6 A. And other things.</p> <p>7 Q. Was any conclusion reached as to what accounted 8 for the demeanor of the Judge at that hearing?</p> <p>9 A. No.</p> <p>10 Q. You have no idea why the Judge was hostile to the 11 Agency's position?</p> <p>12 A. No.</p> <p>13 Q. It was a complete, unexplained surprise to you.</p> <p>14 MR. JOYAL: Objection.</p> <p>15 MR. LANZILLO: Objection.</p> <p>16 MR. LANE: Objection.</p> <p>17 MR. JOYAL: Asked and answered.</p> <p>18 A. I'm as bewildered about it today as I was then.</p> <p>19 Q. Okay.</p> <p>20 THE WITNESS: Would you mind if I took a restroom 21 break.</p> <p>22 MR. McNAIR: No, that's fine.</p> <p>23 THE WITNESS: Thank you very much.</p> <p>24 MR. McNAIR: Take five.</p> <p>25 (Recess held from 11:08 a.m. to 11:21 a.m.)</p>
<p style="text-align: right;">50</p> <p>1 A. Well, there were a number of things that we talked 2 about as a result of the quote/unquote circumstances of that 3 hearing. The circumstances of that hearing involved more 4 than simply Ms. Conley's testimony around that, the issue of 5 that document.</p> <p>6 Q. Okay. What were the other circumstances out of 7 that hearing that were notable and worthy of discussion at 8 the highest levels of the Agency?</p> <p>9 A. Well, the presence for the first time in recorded 10 history in a dependency case of a media representative who 11 was permitted to stay over the objection of the Agency, for 12 example.</p> <p>13 Q. And who was that?</p> <p>14 A. That was a fellow named Palattella from the local 15 newspaper.</p> <p>16 Q. Okay.</p> <p>17 A. The demeanor of the Trial Court which --</p> <p>18 Q. What was of concern?</p> <p>19 A. That the Trial Court appeared overtly hostile to 20 the Agency's position from the outset of the case, in my 21 opinion. The testimony of another witness. And I don't 22 remember the precise particulars of it. About some 23 encounter in the visitation section. The lady's name was 24 Hines. And I had evidence that I wanted to offer to rebut 25 that testimony, and I wasn't permitted to do so.</p>	<p style="text-align: right;">52</p> <p>1 Q. Mr. Cauley, before the break, you mentioned that 2 this was the first time in history that a media 3 representative had been present at a dependency review 4 hearing.</p> <p>5 A. As far as I knew of.</p> <p>6 Q. And that was over your objection.</p> <p>7 A. Correct.</p> <p>8 Q. And do you know whether or not at about that time 9 or shortly prior to that date there had been some litigation 10 between the Times-News and OCY concerning their right to 11 attend hearings?</p> <p>12 A. Not that I was aware of.</p> <p>13 Q. You did not participate in that litigation?</p> <p>14 A. I don't believe there was any litigation.</p> <p>15 Q. Were you aware that Judge Cunningham had issued an 16 order on behalf of the Times-News permitting representatives 17 to attend hearings on certain conditions?</p> <p>18 A. I was aware that he had issued something. It was 19 not an order. It was a memorandum of some sort.</p> <p>20 Q. Okay.</p> <p>21 A. That allowed access to the dependency Courts, per 22 the holdings of a couple of recent Superior Court cases that 23 talked about open Courts. There was -- as far as I know, 24 there was no litigation. And he may have -- he may have 25 indicated it was in response to a request from the Times,</p>

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<p style="text-align: right;">53</p> <p>1 but I can't say for certain that that was what prompted it. 2 I may be right or wrong about that. I don't specifically 3 recall. 4 Q. Okay. So your recollection is that there was not 5 formal litigation, but that the Times may have requested, 6 and Judge Cunningham definitely did issue a memorandum 7 authorizing the entry of media personnel to dependency 8 hearings. 9 A. Yeah. 10 Q. Okay. And you were aware of that prior to the 11 commencement of this hearing, weren't you? 12 A. Yeah. 13 Q. In fact, that was a matter of some concern in the 14 Agency, wasn't it? 15 A. Yes. 16 Q. And you conducted a seminar on that for the 17 employees, didn't you? 18 A. I don't think so, no. 19 Q. You did not meet with the employees and instruct 20 them on media issues? 21 A. There was -- there were discussions in the Agency 22 between the legal department and maybe the casework staff -- 23 I can't specifically recall -- to address how we might 24 comply with what we felt were the requirements of the 25 Juvenile Act that these proceedings be confidential, as</p>	<p style="text-align: right;">55</p> <p>1 those rulings? 2 A. Two-part question. Okay. We didn't acquiesce in 3 the ruling. In fact, pretty much statewide among OCY 4 solicitors we felt that the Superior Court decision was -- 5 was not correct and hadn't taken account of the precise 6 statutory language in the Juvenile Act that made those 7 proceedings confidential. 8 We didn't fight the Superior Court rulings because 9 we never litigated the issue in Common Pleas Court after 10 Judge Cunningham provided the memorandum saying that Courts 11 could be opened in certain circumstances. 12 Q. But it was going to be the Agency's position that 13 no case it went to Court with would ever be within those 14 circumstances. 15 A. Pretty much, yeah, um-hum. 16 Q. And this was done out of a concern for the privacy 17 of the litigants? 18 A. In part. Also because the Juvenile Act, in our 19 view, required it. The Juvenile Act said proceedings under 20 this Act are confidential. Plain meaning of the statute 21 indicated that. And also because of the privacy rights of 22 the parties involved. And also because of the information 23 that is potentially disclosable in those hearings to include 24 things like protected information under HIPAA, drug and 25 alcohol information, psychiatric and psychological</p>
<p style="text-align: right;">54</p> <p>1 against the holding of the Superior Court that in certain 2 circumstances they could be open to the public and under 3 what particular parameters and guidelines. 4 I know that we revised our pleadings to include 5 language that would allow us the predicate upon which to 6 assert that the proceedings should remain closed. We did 7 that in response to Judge Cunningham's memorandum or 8 directive. And I know we had discussions in-house about how 9 we might address the requests from the media to attend what 10 we felt by the Juvenile Act are still confidential 11 proceedings. So I hope that answers your question. 12 Q. All right. You said you revised the pleadings? 13 A. Um-hum. 14 Q. To allow -- to give the predicate to allow 15 assertions that the proceedings should remain closed? 16 A. Um-hum. 17 Q. When you say revised the pleadings, is that a form 18 that was used in every pleading? 19 A. Um-hum. 20 Q. So, henceforth, every pleading filed by the Agency 21 would contain a request that its particular circumstances 22 required it to be closed. 23 A. Correct. 24 Q. I take it the Agency did not acquiesce in the 25 Superior Court rulings and intended to continue to fight</p>	<p style="text-align: right;">56</p> <p>1 information, child abuse information. You know, and a 2 myriad of other statutory protections that are put in place 3 to keep people secure from disclosure of certain kinds of 4 personal information. 5 Q. All right. It's fair to say, is it not, that at 6 that time the Agency was coming under some public scrutiny? 7 A. At what time? 8 Q. At the time of July 28th, 2004. 9 A. What are you referring to? 10 Q. Brittany Legler. Wasn't there a lot of publicity 11 about the Brittany Legler case at that time? 12 A. I'm trying to remember when she passed away. And 13 I want to say it was May of '04. So probably there was 14 some. However, you know, if you characterize it as a lot, I 15 don't know. And how much it was directed at the Agency, I 16 don't specifically recall. But that was an issue that was 17 out there, sure. 18 Q. Right. The Agency felt that it was being 19 subjected to more scrutiny by the media, particularly the 20 local newspaper, than it had been in the past. 21 A. I'm not going to speak on behalf of the Agency 22 about that. I mean, are you asking me -- 23 Q. What did you think? 24 A. What did I think? I thought that the -- I thought 25 that the media was certainly more interested in what</p>

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<p style="text-align: right;">57</p> <p>1 happened in that case. Yeah, sure.</p> <p>2 Q. And was there not more media scrutiny of other</p> <p>3 aspects of OCY at that time, in your opinion?</p> <p>4 A. Not that I knew of.</p> <p>5 Q. All right. Now, with regard to Ed Palattella</p> <p>6 attending this hearing, were you -- was your objection to</p> <p>7 his presence at that hearing based on the fact that you were</p> <p>8 going to be presenting material that was statutorily</p> <p>9 privileged, such as HIPAA material, drug and alcohol</p> <p>10 information, that type of thing? Aside from -- privileged</p> <p>11 aside from the Juvenile Act.</p> <p>12 A. In part. There was -- those hearings,</p> <p>13 particularly a goal change hearing, tend to be more wide</p> <p>14 open. And more information can be disseminated than, you</p> <p>15 know, you might find in a standard, just ordinary six-month</p> <p>16 review hearing. So I wasn't exactly sure how wide open it</p> <p>17 was going to be, how much information the Judge would allow</p> <p>18 to be publicly disseminated. So, in part, I was concerned</p> <p>19 about that. I was concerned about the disclosure of child</p> <p>20 abuse information and the status of the child abuse</p> <p>21 investigation that was done vis-à-vis the parents in that</p> <p>22 case.</p> <p>23 Q. Did the parents or their counsel object to</p> <p>24 Mr. Palattella's presence?</p> <p>25 A. I don't recall that they ever got the opportunity</p>	<p style="text-align: right;">59</p> <p>1 A. Never talked to him about it.</p> <p>2 Q. You didn't ask him --</p> <p>3 A. No.</p> <p>4 Q. -- Ed, what are you doing. You know Ed</p> <p>5 Palattella, right?</p> <p>6 A. Sure. Yeah, I know Ed.</p> <p>7 Q. Been in town 30 years.</p> <p>8 A. Yeah. I was there to do this case. I was sitting</p> <p>9 in the -- at counsel table with my witnesses. And there he</p> <p>10 was in the front row in the back. I mean, I was prepared to</p> <p>11 do my case.</p> <p>12 Q. Okay. Do you have any knowledge as to who</p> <p>13 informed Mr. Palattella that this hearing was going to occur</p> <p>14 or asked him to attend?</p> <p>15 A. No.</p> <p>16 Q. Do you have any suspicion about that?</p> <p>17 A. Well, yeah, probably.</p> <p>18 Q. Who do you suspect invited Mr. Palattella?</p> <p>19 A. I think probably your client did.</p> <p>20 Q. You think?</p> <p>21 A. Yeah.</p> <p>22 Q. And what is that based on?</p> <p>23 A. The e-mails of hers that I reviewed, that invited</p> <p>24 Ms. Cosby to disclose confidential information to him, at</p> <p>25 least in part.</p>
<p style="text-align: right;">58</p> <p>1 to voice an opinion.</p> <p>2 Q. The Judge just shut it down?</p> <p>3 A. I believe that that's what happened, if I'm not</p> <p>4 mistaken.</p> <p>5 Q. So Judge Kelly you don't believe would have</p> <p>6 entertained an objection by the parents, in light of the</p> <p>7 fact that there's going to be child abuse information</p> <p>8 revealed at this hearing?</p> <p>9 A. You're going to have to ask her that. I don't</p> <p>10 know.</p> <p>11 Q. I'm asking you what your opinion was or what you</p> <p>12 believe.</p> <p>13 MR. LANZILLO: Objection to form. It calls for</p> <p>14 speculation.</p> <p>15 A. Yeah, I don't know -- I don't know what she would</p> <p>16 have done, Mr. McNair.</p> <p>17 Q. Did you ask the parents if they objected?</p> <p>18 A. I don't recall that I did. I don't think I ever</p> <p>19 got that far. I think I made my objection, and the Judge</p> <p>20 looked down at me from the bench and said, the objection is</p> <p>21 overruled, proceed. I think that's pretty much how it went</p> <p>22 down. Or request denied, proceed. It was very short.</p> <p>23 Q. What was Mr. Palattella's interest in the case?</p> <p>24 A. You have to ask him.</p> <p>25 Q. He didn't express to you?</p>	<p style="text-align: right;">60</p> <p>1 Q. We'll get to that later. Okay. What else?</p> <p>2 A. Just references in those e-mails to the -- to</p> <p>3 phone conversations between your client and Ms. Cosby about</p> <p>4 Mr. Palattella and the Times and the -- and I don't know,</p> <p>5 there may have been other things. But I just -- you know,</p> <p>6 that's my sense of it.</p> <p>7 Q. Okay. And I guess you reviewed a lot of e-mails.</p> <p>8 How many e-mails out of -- I think you said there were 2000</p> <p>9 e-mails that you reviewed, correct?</p> <p>10 A. That was an estimate. There was a lot of them.</p> <p>11 Q. And you're satisfied, based on the representations</p> <p>12 of Mr. Granger, that that was all of them?</p> <p>13 A. That's what he -- well, what we asked him to --</p> <p>14 what we asked him to get us -- I specifically asked him, as</p> <p>15 I recall it, was the e-mails between January 1st of '04</p> <p>16 through -- initially, I believe it was approximately</p> <p>17 August 10th or 12th of '04. And then ultimately through the</p> <p>18 time of your client's resignation.</p> <p>19 Q. Okay.</p> <p>20 A. He looked at those. That was the window of time,</p> <p>21 just because there were so many.</p> <p>22 Q. How many e-mails did Mr. Granger produce to you</p> <p>23 originating from Abby Conley going to Mr. Palattella?</p> <p>24 A. Oh, none that I saw, that I -- I don't think there</p> <p>25 were any that way.</p>

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<p style="text-align: right;">61</p> <p>1 Q. Okay. How many e-mails did you see from 2 Mr. Palattella to Ms. Conley? 3 A. None. 4 Q. So as far as you know, Ms. Conley didn't e-mail 5 Mr. Palattella from her County computer and ask him to 6 attend the hearing. 7 A. Not that I recall seeing, no. 8 Q. And it would be fair to say if you saw -- 9 A. Oh, I would -- 10 Q. -- such a thing, you would remember it. 11 A. -- notice that Mr. McNair, yeah. 12 Q. Okay. It's not as if you might have seen it and 13 forgotten about it. 14 A. I wouldn't have forgotten that, no, sir. 15 Q. I didn't think so. Okay. So we're at the hearing 16 on July 28th. And Ms. Conley is called to testify. Who 17 calls her to testify? 18 A. I believe Mr. Villella. 19 Q. And at that point there's some discussion over 20 this Court summary and some differences between the two 21 Court summaries; is that correct? 22 A. Yeah, there was testimony about that. 23 Q. And was there any substantive difference, in your 24 mind, between the Court summary that Ms. Conley claimed was 25 the original one and the one that was submitted to the</p>	<p style="text-align: right;">63</p> <p>1 A. She performed a -- you know, a partial function 2 of -- that was pretty limited in terms -- 3 Q. Right. 4 A. -- of the role of the Agency in this case. 5 Q. All right. So would it be fair to say that you 6 were not concerned with this issue at the time of the 7 hearing? 8 A. Oh, no, I was very concerned. 9 Q. What were you concerned about? 10 A. I was concerned that your client came before the 11 Court and essentially accused the casework supervisor of 12 manipulating or altering her work product. 13 Q. Um-hum. And you were concerned because that made 14 my client bad. 15 A. No. 16 Q. Were you concerned that Ms. Deveney had, in fact, 17 made those alterations? 18 A. I was concerned because the finder of fact upon 19 whom I was relying to make a fair and informed judgment 20 about the validity of the Agency's position was being told 21 something by your client that had a negative impact on the 22 Agency's supervisor of this case and her credibility as a 23 result. 24 Q. What if she deserved it? Did you consider that? 25 A. Well, any good lawyer is going to consider both</p>
<p style="text-align: right;">62</p> <p>1 Court? 2 A. You know, it's been a long time since I've looked 3 at that stuff. I wouldn't say there was a huge difference. 4 No, I don't. 5 Q. Okay. So any change between the two would not 6 affect the quantum of proof that the Agency was presenting 7 to the Court? 8 MR. LANZILLO: Objection, calls for -- 9 Q. In your opinion as an attorney of 30 years in 10 practice. 11 A. Well -- 12 MR. LANZILLO: Calls for legal conclusion. 13 A. -- it -- 14 MR. MCNAIR: Right. Yes, it does. 15 A. Either way they were written, from my standpoint 16 as the lawyer, the summaries that she provided were 17 irrelevant. 18 Q. So it didn't make any difference to you? 19 A. The fact that the mother was a good parent in her 20 interaction with the children or a superb parent in her 21 supervised interaction with the children was really 22 irrelevant in the narrow context in which your client dealt 23 with this family. 24 Q. Right. It wasn't her call to make, was it, 25 whether -- you know, what the outcome of the case should be.</p>	<p style="text-align: right;">64</p> <p>1 sides. 2 Q. Right. 3 A. Um-hum. 4 Q. So did you consider perhaps Ms. Deveney did do 5 what Ms. Conley indicated and altered the Court's summary 6 after she had signed it? 7 MR. LANZILLO: Objection to form. Lack of 8 foundation. 9 A. Did the -- shall I answer? I mean, I can try to 10 answer it. 11 MR. LANZILLO: Sure, you can answer over my 12 objection. 13 A. Did the thought cross my mind that it could have 14 happened as your client indicated? 15 Q. Did you seriously consider that as a possibility? 16 A. I considered it. I don't know how seriously I 17 considered it. Because I had worked with Ms. Deveney for 18 years. I didn't have very much experience with your client, 19 frankly, in her capacity professionally or otherwise. And I 20 had never had any reason to suspect that Ms. Deveney would 21 have done anything untoward in that regard. 22 Q. Okay. So based on Ms. Deveney's character -- 23 A. Well. 24 Q. -- and your knowledge of her. The fact that you 25 had worked with her for years.</p>

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<p style="text-align: right;">65</p> <p>1 A. Yeah, my inclination would have been to think 2 that, you know, this did not happen the way your client 3 indicated. And Ms. Deveney indicated to me that, you know, 4 that that had not happened that way. 5 Q. And so at this point, and this was -- when was 6 this that you went through this consideration process and 7 came to these conclusions that Ms. Conley was being 8 untruthful in her testimony under oath to the Court? 9 MR. LANZILLO: Objection to form. 10 A. You know, I never said she was being untruthful. 11 I mean, I was -- I didn't understand really what the -- what 12 the complaint was. 13 Q. Okay. Let me just put some boundaries on this. 14 Ms. Conley claimed that the Court summary that she authored 15 and submitted was altered after she submitted it without her 16 knowledge. Are you aware that she made that allegation? 17 MR. LANZILLO: Let me enter an objection. To the 18 extent that you're going to be characterizing -- 19 MR. McNAIR: I'm not characterizing anything. I'm 20 stating fact. 21 MR. LANZILLO: Let me finish my objection, please. 22 MR. JOYAL: No, you're not stating a fact. 23 MR. LANZILLO: No, and -- 24 MR. McNAIR: Wait until he's done before you start 25 yammering, will you.</p>	<p style="text-align: right;">67</p> <p>1 there had been changes suggested and/or made and that she 2 had made them, as I recall. So there was a lot of stuff 3 going on in this hearing, Mr. McNair, than just this 4 particular issue. And this was not as big a focus for me as 5 some of the other things. 6 Q. Well, so, then, it would be inaccurate to say that 7 you accepted Ms. Deveney's word in contrast to Ms. Conley's 8 word. 9 A. Oh, no, that would be very accurate. 10 Q. Ms. Deveney was telling the truth; Ms. Conley was 11 not telling the truth. 12 MR. LANZILLO: Objection. Vague and ambiguous. 13 MR. JOYAL: How about -- 14 MR. McNAIR: About the particular issue we've been 15 discussing. I don't need a speech. 16 MR. JOYAL: Then why don't we go to the transcript 17 of what your client said. 18 MR. McNAIR: You can do that. You'll have your 19 opportunity. 20 MR. JOYAL: Well, don't -- 21 MR. McNAIR: Don't tell me how to conduct my 22 examination. 23 MR. JOYAL: Conduct it for the rest of your life, 24 Mr. McNair. 25 MR. McNAIR: Good, I will.</p>
<p style="text-align: right;">66</p> <p>1 THE WITNESS: Just come on, gentlemen, please -- 2 MR. LANZILLO: My objection simply is that I don't 3 believe that is an accurate representation of her 4 testimony at the hearing and, therefore, I object 5 on foundational grounds. 6 MR. McNAIR: Okay. 7 A. You know, we kind of went round and round and 8 round with her about the documents, and when they were 9 produced, and when they were reviewed, you know. And it 10 appears -- the gist of it may have been that there had been 11 an alteration or some change made in it at some point in 12 time, but I wasn't really clear. 13 I don't think she ever precisely came out and 14 said, after I signed it, Ms. Deveney changed it and 15 submitted it that way. You know, that -- it was -- it was 16 unclear, you know. And, frankly, I wasn't as concerned 17 about that part of what was going on as I was with your 18 client's -- I don't know, I'll be fair here, performance 19 about the fear that she had for some sort of retaliation at 20 her job, and the apparent impact that had on Judge Kelly. 21 That was more troubling to me. That was more what 22 I was concerned about, than, you know, the mechanics of how 23 this document got changed and whether it was done, you know, 24 inside or outside the normal course of business. 25 Because Ms. Conley had talked about the fact that</p>	<p style="text-align: right;">68</p> <p>1 MR. JOYAL: What I'm trying to tell you, is it 2 will come out in the transcript today. Okay? So 3 instead of asking questions that are argumentative 4 and objectionable and irrelevant, and will 5 probably be sustained as objections, why don't you 6 ask a straight-out question and either give the 7 witness the opportunity to read the transcript, 8 because he's going to have the opportunity to do 9 it anyway. 10 MR. McNAIR: Thank you for the practice seminar. 11 BY MR. McNAIR: 12 Q. Mr. Cauley, you concluded that with regard to the 13 alteration of this case aide summary, Ms. Deveney was 14 telling the truth and Ms. Conley was not; is that fair? 15 MR. LANE: Objection to form. 16 A. I believed Ms. Deveney when she told me that she 17 did not falsify the document that was submitted to the Court 18 by altering it after Ms. Conley signed it. I believed it 19 when she told me, I believe it today. 20 Q. Now, I think you testified before that as the 21 result of the events of this hearing and those factors that 22 you discussed, there was a meeting of the supervisor or the 23 Agency director and you and some other people? 24 A. Um-hum. 25 Q. Do you recall when that meeting occurred, what day</p>

18 (Pages 69 to 72)

<p style="text-align: right;">69</p> <p>1 of the week it was?</p> <p>2 A. No. You know, I couldn't tell you what day of the</p> <p>3 week. Let me tell you what happened, okay.</p> <p>4 Q. Okay.</p> <p>5 A. I remember it was either lunchtime during the</p> <p>6 course of the hearing or at the end of the day of that</p> <p>7 hearing, that I was in my office. And this situation had</p> <p>8 transpired. And I had a conversation with Attorney Allgeier</p> <p>9 about the very unusual circumstances, at least in my</p> <p>10 opinion, of that hearing. And that I was troubled by the</p> <p>11 fact that Mr. Villella had in his possession what appeared</p> <p>12 to me to be Agency work product that had been obviously</p> <p>13 inappropriately disseminated to him, at least in my view.</p> <p>14 And in the course of those discussions,</p> <p>15 Ms. Allgeier brought to my attention concerns that she was</p> <p>16 aware of, that I was not, about Ms. Conley's activities in</p> <p>17 another case or maybe cases, I can't recall for sure,</p> <p>18 wherein she was suspected of having maybe disseminated</p> <p>19 confidential information to people not entitled to it. And</p> <p>20 we had some discussions about those concerns and how they</p> <p>21 might be investigated.</p> <p>22 Q. Who else participated in that discussion?</p> <p>23 A. That was initially just me and Attorney Allgeier,</p> <p>24 as I recall it. And I think I was having lunch. And then</p> <p>25 based on -- based on the situations that she was involved</p>	<p style="text-align: right;">71</p> <p>1 and we talked about that. And it had to do with your</p> <p>2 client's, as I characterized it before, performance. The</p> <p>3 so-called fear thing that she did there about losing her</p> <p>4 employment. And the Judge's letter asking Ms. Liebel to be</p> <p>5 understanding or sensitive or something. I can't</p> <p>6 remember -- I don't remember how she worded it.</p> <p>7 But I know that there were concerns about the</p> <p>8 overall impact of this case and how this case went down</p> <p>9 during that hearing, and the impact that it might have on</p> <p>10 the Agency and the Court's relationship with the Agency.</p> <p>11 The whole situation was very troubling. And we had</p> <p>12 discussions around that. And then also around the apparent</p> <p>13 dissemination of information by your client that she</p> <p>14 shouldn't have been disseminating.</p> <p>15 Q. What information was that?</p> <p>16 A. Well, the work product, for example, that found</p> <p>17 its way into Mr. Villella's hand. And then the other</p> <p>18 information that Attorney Allgeier was telling me about in</p> <p>19 the other case that your client was involved in. And, you</p> <p>20 know, I'm reluctant to talk --</p> <p>21 Q. What's your understanding of what this information</p> <p>22 was that Ms. Conley revealed?</p> <p>23 A. It was information that was being communicated to</p> <p>24 Ms. Cosby, something to the effect that either Ms. Schetter</p> <p>25 or Ms. Deveney had seen some e-mail on your client's desktop</p>
<p style="text-align: right;">70</p> <p>1 in, that I was unaware of, and the circumstance that I was</p> <p>2 then involved in with this -- the case dealing with the</p> <p>3 twins, we spoke to Ms. Liebel.</p> <p>4 Q. When was that?</p> <p>5 A. It would have been -- the hearing was the 28th of</p> <p>6 July. It would have been within a day or so.</p> <p>7 Q. The hearing was a Friday.</p> <p>8 A. Pardon me?</p> <p>9 Q. July 28th was a Friday.</p> <p>10 A. Okay.</p> <p>11 Q. Is that correct?</p> <p>12 A. I think you're right about that, as I remember,</p> <p>13 yeah. But it would have been the very first part of next</p> <p>14 week, probably.</p> <p>15 Q. Okay.</p> <p>16 A. You know, within a couple of days of the beginning</p> <p>17 of the week.</p> <p>18 Q. Monday, Tuesday, Wednesday?</p> <p>19 A. Yeah. Yeah, I think.</p> <p>20 Q. Who spoke to Ms. Liebel? Did you and Ms. Allgeier</p> <p>21 both?</p> <p>22 A. We may have. I can't specifically tell you. You</p> <p>23 know, I mean, I know that we -- I know that we discussed</p> <p>24 that with her. And I know that in the interim she had</p> <p>25 gotten a letter from Judge Kelly that was very troubling,</p>	<p style="text-align: right;">72</p> <p>1 computer either from or to Ms. Cosby after Ms. Cosby had</p> <p>2 left the Agency.</p> <p>3 And I'm not sure of all the particulars of that.</p> <p>4 Ms. Allgeier knows much more about it than I do. But other</p> <p>5 information that was coming to people in another case. And</p> <p>6 I don't want to use the name because, again, I feel</p> <p>7 constrained by the confidentiality provisions of the law</p> <p>8 that I think still apply to me. But it was -- you know, you</p> <p>9 know which case I'm talking about.</p> <p>10 Q. I believe that would be the -- we could call that</p> <p>11 the VW case.</p> <p>12 A. That could be the one, yeah.</p> <p>13 Q. Okay.</p> <p>14 A. You know, the -- that people were getting access</p> <p>15 to information about that case and allegations against Ms. W</p> <p>16 that they wouldn't have otherwise been privy to had your</p> <p>17 client not disseminated it. At least that was the way it</p> <p>18 was looking.</p> <p>19 So we had some discussions around those things.</p> <p>20 And then made some determinations to advise the County and</p> <p>21 to, consistent with the County's computer usage policy,</p> <p>22 access your client's e-mails. That happened in early</p> <p>23 August. Maybe the 1st, 2nd, 3rd or 4th of August, sometime</p> <p>24 in there.</p> <p>25 MR. LANZILLO: Tim, I'm sorry, before you ask your</p>

19 (Pages 73 to 76)

<p style="text-align: right;">73</p> <p>1 next question, can we go off the record for a 2 moment? 3 MR. McNAIR: Sure. 4 (Discussion held off the record.) 5 MR. LANZILLO: On the short break, I asked for 6 Counsels' professional courtesy of allowing me to 7 excuse myself from the deposition due to an 8 irreconcilable conflict. All Counsel agreed that 9 Attorney Joyal and Attorney Lane could object on 10 my behalf to any question, and that any objections 11 they should lodge would be deemed to be on my 12 behalf as well. And I appreciate that 13 accommodation from everyone. 14 MR. McNAIR: I'm in agreement with that. 15 MR. LANZILLO: Thank you. 16 MR. ONORATO: You may want to add about redirect. 17 MR. LANZILLO: Right. If there would be 18 something -- in the unlikely event there would be 19 something that I felt was necessary to inquire 20 into on behalf of the County, I reserve the right 21 to briefly reconvene the deposition at a 22 mutually-convenient time, mutually convenient, of 23 course, for the witness and for counsel. I don't 24 anticipate that, but I would like to reserve that 25 right.</p>	<p style="text-align: right;">75</p> <p>1 with the VW case. 2 Q. Okay. 3 A. But, again, I wasn't involved in that case. 4 Q. All right. I'm just -- 5 A. You know, she was. She was working that case. 6 Q. So it was Allgeier's concern, to your 7 understanding, was that Abby may have said something to 8 people who were not entitled to information about her 9 allegations regarding PW. 10 A. Correct. 11 Q. Okay. And is it an Agency policy that the parent 12 of a child who is under Agency jurisdiction is not entitled 13 to know if a worker has observed a coworker treating that 14 child roughly, that the parent shouldn't be told about that? 15 A. No. 16 Q. That's not your -- you don't agree with that? 17 A. It's not our policy. It wasn't the Agency's 18 policy that that would be the situation. 19 Q. Okay. Well, that was a concern, wasn't it? You 20 thought that Abby had told the mother of that child about 21 what had happened. 22 MR. JOYAL: Objection to form. 23 MR. LANE: Join in. 24 A. I told you before, I don't know who -- 25 MR. JOYAL: Excuse me. Excuse me. It's not</p>
<p style="text-align: right;">74</p> <p>1 MR. McNAIR: I will agree to do that 2 notwithstanding the discovery deadline. 3 MR. LANZILLO: Thank you. 4 MR. McNAIR: As long as everybody else is in 5 agreement. If they have an objection, they should 6 say so. 7 MR. JOYAL: I have no objection. 8 MR. LANE: No objection. 9 MR. LANZILLO: Thank you. 10 BY MR. McNAIR: 11 Q. The concern -- the issue that concerned 12 Ms. Allgeier was an allegation by Ms. Conley that a 13 caseworker, who we'll refer to as PW, roughly treated a 14 child that she was the caseworker for and that there was 15 subsequently a DPW investigation of that incident. Is that 16 a fair statement? 17 A. No. 18 Q. It's not? 19 A. No. Ms. Allgeier's concern wasn't that. Her 20 concern was that apparently your client may have been 21 furnishing information about that matter to people that were 22 not entitled to know about it, in violation of the Child 23 Protective Services Law. 24 Q. And do you have any idea who those people were? 25 A. No, not off -- not offhand. People associated</p>	<p style="text-align: right;">76</p> <p>1 cross. He's not a party. He hasn't been 2 determined to be a hostile witness. He's your 3 witness. It is not cross. 4 MR. McNAIR: What's the problem with the form? 5 MR. JOYAL: Objection to form. It's a leading 6 question. 7 MR. McNAIR: I'm permitted, under Rule 30, to ask 8 leading questions. 9 MR. JOYAL: Of whom? 10 MR. McNAIR: Read it. Of anybody. Read it. 11 MR. JOYAL: I don't believe so, Mr. McNair. 12 MR. McNAIR: Well, I believe you're wrong. And if 13 you want to take a break -- 14 MR. JOYAL: Well, I'm objecting to form -- 15 MR. McNAIR: -- you can read Rule 30. You're in 16 federal court. Do you understand that? 17 MR. JOYAL: Mr. McNair -- 18 MR. McNAIR: We have a federal rule. 19 MR. JOYAL: -- I've objected to this question. 20 The Judge will -- 21 MR. McNAIR: Well, it's a baseless objection. It 22 doesn't make any sense, and it's calculated to 23 disrupt my examination of the witness. 24 MR. JOYAL: I've made my objection. The Judge 25 will rule.</p>

20 (Pages 77 to 80)

<p style="text-align: right;">77</p> <p>1 MR. McNAIR: And it's suggestive.</p> <p>2 MR. JOYAL: It's suggestive? You suggested the</p> <p>3 answer to the question. He gave you a no. Then</p> <p>4 you asked him a leading question again. You want</p> <p>5 to read the questions back?</p> <p>6 MR. McNAIR: Do you want to let me conduct the</p> <p>7 deposition?</p> <p>8 MR. JOYAL: The question was, it wasn't your</p> <p>9 concern, it was your concern.</p> <p>10 MR. McNAIR: Okay.</p> <p>11 BY MR. McNAIR:</p> <p>12 Q. Was the concern that Abby had told the mother</p> <p>13 about the incident that she alleged to have observed that</p> <p>14 led to the DPW investigation?</p> <p>15 A. The concern, as I understood it, was that there</p> <p>16 were other people, and by that I mean in addition to the</p> <p>17 mother, who learned of this information that were not</p> <p>18 entitled to it. I don't believe there was any concern that</p> <p>19 Ms. Conley had had conversation with the mother about it. I</p> <p>20 mean, that's not coming back to me at all. We're talking</p> <p>21 about other people that would not have been entitled to know</p> <p>22 that this allegation of abuse had been reported and was</p> <p>23 being investigated.</p> <p>24 Q. And do you know who these other people were?</p> <p>25 A. Not off -- no, I don't recall. I wasn't involved</p>	<p style="text-align: right;">79</p> <p>1 snooping, you know, so.</p> <p>2 Q. I'm not going to argue with you about that.</p> <p>3 A. Okay.</p> <p>4 Q. Okay.</p> <p>5 A. What other --</p> <p>6 Q. What action was taken other than to decide to root</p> <p>7 through Abby's e-mails or regarding investigating</p> <p>8 Ms. Conley?</p> <p>9 MR. JOYAL: Objection to form.</p> <p>10 Q. Was there action taken with regard to these other</p> <p>11 concerns about the press attending the hearing, about the</p> <p>12 Judge being hostile?</p> <p>13 A. Well, we had some discussions about, you know, why</p> <p>14 the Judge reacting -- was reacting the way she was reacting.</p> <p>15 We had some discussions about the Judge's perception, as she</p> <p>16 outlined it in the letter that she sent to Ms. Liebel about</p> <p>17 how to best address that.</p> <p>18 I think Ms. Liebel made a determination that she</p> <p>19 wanted to speak to Judge Kelly about that. And at some</p> <p>20 point down the road I believe that she did. I wasn't privy</p> <p>21 to that. So I don't -- I wasn't there. I believe that</p> <p>22 maybe there was a discussion. I don't know.</p> <p>23 You know, we were concerned, obviously, since</p> <p>24 Judge Kelly was hearing all of our cases, that, you know,</p> <p>25 this was just -- it was not a good thing for her to be</p>
<p style="text-align: right;">78</p> <p>1 in the case. There were people that were players in the VW</p> <p>2 case that Ms. Allgeier would have known about that I</p> <p>3 wouldn't have known about.</p> <p>4 Q. All right. Were there any other concerns that</p> <p>5 were raised concerning Ms. Conley in this meeting? Or let</p> <p>6 me withdraw that. Initially, there was a meeting about the</p> <p>7 events of the July 28th hearing. Am I correct that that</p> <p>8 meeting turned into a meeting about Ms. Conley specifically</p> <p>9 as opposed to the other concerns that you listed?</p> <p>10 A. No. No.</p> <p>11 Q. What action was taken with regard to the other</p> <p>12 concerns as a result of that meeting aside from deciding to</p> <p>13 snoop through Ms. Conley's e-mail?</p> <p>14 MR. JOYAL: Objection.</p> <p>15 MR. LANE: Objection to form.</p> <p>16 MR. McNAIR: What's wrong with the form?</p> <p>17 MR. LANE: I don't like the word snoop.</p> <p>18 MR. McNAIR: You don't like the word snoop.</p> <p>19 There's a lot of words I don't like that other</p> <p>20 lawyers use them.</p> <p>21 MR. LANE: I can still object to it if I don't</p> <p>22 like it. Don't ask me what the basis of my</p> <p>23 objection is if you don't want to hear it.</p> <p>24 MR. McNAIR: Fine.</p> <p>25 A. I wouldn't characterize what transpired there as</p>	<p style="text-align: right;">80</p> <p>1 thinking of the Agency in the terms that were being</p> <p>2 proffered by your client. So, yeah, I mean, those things</p> <p>3 were looked at.</p> <p>4 Q. Okay.</p> <p>5 A. And then we made the decision to advise</p> <p>6 representatives of the County that we wanted to do further</p> <p>7 review to see if we could document whether or not there was</p> <p>8 improper dissemination coming out of your client's office.</p> <p>9 So we spoke to Mr. Onorato, I believe Ms. Bloxdorf was</p> <p>10 involved at some point early on in those discussions.</p> <p>11 I think Ms. Liebel; Attorney Allgeier; myself;</p> <p>12 Colleen Locke, who was the deputy director. Charlene</p> <p>13 Kolupski, who was a program director who oversaw our</p> <p>14 personnel functions in-house, was involved in some of that</p> <p>15 also. And we suggested to the County that we should look at</p> <p>16 the e-mails consistent with the computer usage policy. And</p> <p>17 that was approved --</p> <p>18 Q. Okay.</p> <p>19 A. -- by Mr. Onorato. And then we asked Mr. Granger</p> <p>20 to pull the e-mails, which he did.</p> <p>21 Q. What e-mails were you aware of prior to this</p> <p>22 meeting in the first week of August? What had you been told</p> <p>23 about e-mails from Ms. Conley? What was it specifically</p> <p>24 that led you to look to e-mails?</p> <p>25 A. Attorney Allgeier recounted to me that she had</p>

21 (Pages 81 to 84)

<p style="text-align: right;">81</p> <p>1 been told by somebody, and I want to say maybe Ms. Schetter 2 or maybe Ms. Deveney, that they had seen some sort of e-mail 3 transmission on Ms. Conley's computer screen at her work 4 station between -- between Ms. Conley and Ms. Cosby. 5 And there was also some other -- some other piece 6 of that information about somehow Ms. Cosby's phone number 7 being made available to Ms. -- to VW's lawyer. I don't 8 remember how that all pulled together. You know, I'm doing 9 the best I can from memory here. That was part of it in 10 terms of is she leaking information out of here that she's 11 not supposed to be getting. 12 Q. What was it that led you to be concerned that she 13 was leaking information? 14 A. What I've already told you. 15 Q. Villella having the Court summary. 16 A. We have that. We have this contact with 17 Ms. Cosby. Something about the phone number to VW's lawyer. 18 And then other people associated or not associated with her 19 entitled to the information about the abuse allegations 20 against PW, getting that information, that they were still 21 associated with the VW case. 22 Q. And did -- never mind. Okay. Was there any 23 discussion at that meeting, in light of Judge Kelly's 24 letter, about Ms. Conley's continued employment with the 25 Agency?</p>	<p style="text-align: right;">83</p> <p>1 Q. You later learned, did you not, that Ms. Deveney 2 had spoken to Ms. Conley about that issue early in July, did 3 you not? 4 A. I later learned that Ms. Deveney, and I think also 5 Ms. Biroscak, who was Ms. Deveney's supervisor, pretty sure, 6 had had some discussions with Ms. Conley about maintaining 7 confidentiality of information and not disseminating it. I 8 don't know that it was specific to e-mail as opposed to 9 dissemination in any other form. 10 But I was aware that in -- in June and maybe -- 11 maybe June and in July of '04 that those conversations had 12 happened. You know, I wasn't aware of the particulars of 13 them. I didn't learn about that until, you know, frankly, 14 probably -- I probably didn't learn about that until after 15 your client resigned. 16 Q. So you weren't aware of that prior to August 20th? 17 A. I don't recall that I was, Mr. McNair. It seems 18 to me that I didn't learn about that until after your client 19 resigned and then appealed to the Civil Service Commission. 20 And I think in connection with looking at that stuff, that's 21 when I first learned about that. 22 Q. All right. 23 A. That's recollection. That's my best answer. 24 Q. So the e-mail from Ms. Deveney to Ms. Conley 25 wasn't provided to you by Mr. Granger, the e-mail of</p>
<p style="text-align: right;">82</p> <p>1 A. At the first meetings in August, you mean? 2 Q. Yeah. 3 A. No. 4 Q. No thought of terminating Ms. Conley's employment 5 at that time? 6 A. No. 7 Q. What was the point of the investigation, then? 8 A. We wanted to see if she had been -- if it could be 9 documented that she had been disclosing confidential 10 information to people that were not entitled to it. It 11 appeared that maybe that is what was going on. 12 Q. Do you know whether that matter had been discussed 13 between Ms. Conley and her supervisor earlier that year? 14 MR. JOYAL: What matter is that? 15 MR. McNAIR: E-mail, disclosing information 16 through e-mail. 17 Q. Do you know if she had a discussion with 18 Ms. Deveney on July 8th or so? 19 A. Well, I didn't know then. 20 Q. Ms. Deveney didn't tell you, oh, I've already 21 talked to Abby about that? 22 A. No. 23 Q. Don't worry, she knows? 24 A. No. I didn't know about any of that in August of 25 '04.</p>	<p style="text-align: right;">84</p> <p>1 July 9th; is that correct? Mr. Granger missed that one? 2 A. Well, you know, maybe it was. Probably was. 3 Yeah. Yeah, you know, it probably -- yeah, it was, I 4 remember that now. I would have looked at that during the 5 month of August when I looked at all those other e-mails. 6 I'm sorry, I wasn't focusing on that. 7 (Cauley Deposition Exhibits 1 and 2 marked for 8 identification.) 9 Q. Anyway, you submitted a report under date of 10 August 20th, '04. And I've handed you a document that I've 11 marked as Cauley Deposition Exhibit 1, which has a letter 12 addressed to John Onorato, Esquire on top, dated 13 August 2004. And I can represent to you that this is -- 14 been represented to me to be some, but not all, of the 15 information that you submitted with that letter. That is, 16 there's other information that I was provided that I didn't 17 include in the exhibit. Are you familiar with that 18 document? 19 A. Yeah, the letter is clearly mine. I'm just 20 looking at the attachments, Mr. McNair, particularly in view 21 of what you -- what you just said. And I'm not sure what 22 you're referring to. But I -- 23 Q. I have the entire document here, if you want to 24 look at it -- 25 A. Well, that's --</p>

21 (Pages 81 to 84)

<p style="text-align: right;">81</p> <p>1 been told by somebody, and I want to say maybe Ms. Schetter 2 or maybe Ms. Deveney, that they had seen some sort of e-mail 3 transmission on Ms. Conley's computer screen at her work 4 station between -- between Ms. Conley and Ms. Cosby. 5 And there was also some other -- some other piece 6 of that information about somehow Ms. Cosby's phone number 7 being made available to Ms. -- to VW's lawyer. I don't 8 remember how that all pulled together. You know, I'm doing 9 the best I can from memory here. That was part of it in 10 terms of is she leaking information out of here that she's 11 not supposed to be getting. 12 Q. What was it that led you to be concerned that she 13 was leaking information? 14 A. What I've already told you. 15 Q. Villella having the Court summary. 16 A. We have that. We have this contact with 17 Ms. Cosby. Something about the phone number to VW's lawyer. 18 And then other people associated or not associated with her 19 entitled to the information about the abuse allegations 20 against PW, getting that information, that they were still 21 associated with the VW case. 22 Q. And did -- never mind. Okay. Was there any 23 discussion at that meeting, in light of Judge Kelly's 24 letter, about Ms. Conley's continued employment with the 25 Agency?</p>	<p style="text-align: right;">83</p> <p>1 Q. You later learned, did you not, that Ms. Deveney 2 had spoken to Ms. Conley about that issue early in July, did 3 you not? 4 A. I later learned that Ms. Deveney, and I think also 5 Ms. Biroscak, who was Ms. Deveney's supervisor, pretty sure, 6 had had some discussions with Ms. Conley about maintaining 7 confidentiality of information and not disseminating it. I 8 don't know that it was specific to e-mail as opposed to 9 dissemination in any other form. 10 But I was aware that in -- in June and maybe -- 11 maybe June and in July of '04 that those conversations had 12 happened. You know, I wasn't aware of the particulars of 13 them. I didn't learn about that until, you know, frankly, 14 probably -- I probably didn't learn about that until after 15 your client resigned. 16 Q. So you weren't aware of that prior to August 20th? 17 A. I don't recall that I was, Mr. McNair. It seems 18 to me that I didn't learn about that until after your client 19 resigned and then appealed to the Civil Service Commission. 20 And I think in connection with looking at that stuff, that's 21 when I first learned about that. 22 Q. All right. 23 A. That's recollection. That's my best answer. 24 Q. So the e-mail from Ms. Deveney to Ms. Conley 25 wasn't provided to you by Mr. Granger, the e-mail of</p>
<p style="text-align: right;">82</p> <p>1 A. At the first meetings in August, you mean? 2 Q. Yeah. 3 A. No. 4 Q. No thought of terminating Ms. Conley's employment 5 at that time? 6 A. No. 7 Q. What was the point of the investigation, then? 8 A. We wanted to see if she had been -- if it could be 9 documented that she had been disclosing confidential 10 information to people that were not entitled to it. It 11 appeared that maybe that is what was going on. 12 Q. Do you know whether that matter had been discussed 13 between Ms. Conley and her supervisor earlier that year? 14 MR. JOYAL: What matter is that? 15 MR. McNAIR: E-mail, disclosing information 16 through e-mail. 17 Q. Do you know if she had a discussion with 18 Ms. Deveney on July 8th or so? 19 A. Well, I didn't know then. 20 Q. Ms. Deveney didn't tell you, oh, I've already 21 talked to Abby about that? 22 A. No. 23 Q. Don't worry, she knows? 24 A. No. I didn't know about any of that in August of 25 '04.</p>	<p style="text-align: right;">84</p> <p>1 July 9th; is that correct? Mr. Granger missed that one? 2 A. Well, you know, maybe it was. Probably was. 3 Yeah. Yeah, you know, it probably -- yeah, it was, I 4 remember that now. I would have looked at that during the 5 month of August when I looked at all those other e-mails. 6 I'm sorry, I wasn't focusing on that. 7 (Cauley Deposition Exhibits 1 and 2 marked for 8 identification.) 9 Q. Anyway, you submitted a report under date of 10 August 20th, '04. And I've handed you a document that I've 11 marked as Cauley Deposition Exhibit 1, which has a letter 12 addressed to John Onorato, Esquire on top, dated 13 August 2004. And I can represent to you that this is -- 14 been represented to me to be some, but not all, of the 15 information that you submitted with that letter. That is, 16 there's other information that I was provided that I didn't 17 include in the exhibit. Are you familiar with that 18 document? 19 A. Yeah, the letter is clearly mine. I'm just 20 looking at the attachments, Mr. McNair, particularly in view 21 of what you -- what you just said. And I'm not sure what 22 you're referring to. But I -- 23 Q. I have the entire document here, if you want to 24 look at it -- 25 A. Well, that's --</p>

22 (Pages 85 to 88)

85	87
<p>1 Q. -- to refer to it. What I've omitted are some 2 term papers that Abby had on her -- stored on her hard 3 drive, basically. 4 A. Okay. Yeah, I remember that part of it. And then 5 there's all this other stuff. Okay. 6 Q. Okay. 7 A. Yeah, this appears to be -- 8 Q. So this was the product of the investigation that 9 was launched at that meeting in early August; is that fair? 10 A. Yes. 11 Q. To your knowledge, did Ms. Allgeier conduct any 12 investigation of her own or submit any report of any such 13 investigation? 14 A. To Mr. Onorato? 15 Q. To anyone. 16 A. I think that she prepared a memorandum for 17 Mr. Taft in connection with the Civil Service appeal. You 18 know, I'm pretty sure. 19 Q. Okay. Because I can represent to you that no such 20 document has been identified to us or noted to be privileged 21 in any way. 22 MR. JOYAL: What document? I was reading this. I 23 didn't listen. 24 MR. McNAIR: Reports of investigation. 25 MR. JOYAL: From who? Allgeier?</p>	<p>1 because he's not my client. Mr. Lanzillo's not 2 here and it's kind of not fair to him. 3 But I want to at least put on the record that 4 we're getting into areas now where there are 5 meetings with the County Solicitor potentially 6 seeking legal advice which could be protected by 7 the attorney/client privilege. 8 Mr. Lanzillo is not here to protect the 9 County's interest and preserve the attorney/client 10 privilege. It's not my client's privilege to 11 protect, so I can't protect the attorney/client 12 privilege, it's the County's -- 13 MR. McNAIR: Well, let me just go this way. I'm 14 not trying to be tough or tricky. If you think -- 15 you know, I'll give you standing to object to any 16 privilege that the County may have. That applies 17 to you, Mr. Lane. 18 So if you think there's a privilege problem, 19 I would appreciate it if you would raise it, 20 because it's certainly not my intention to take 21 advantage of my friend Rich's absence from this 22 proceeding. And if that's what I'm doing, thank 23 you for bringing it to my attention. I consider 24 that very serious. And if that's what I'm doing, 25 I want to know. I don't want to do that. Okay?</p>
86	88
<p>1 A. I don't know -- I don't know that she did -- 2 Q. I'm just saying. 3 A. -- an investigation, per se. I think she did a 4 summary of what she -- what happened with her case. 5 Q. And what was her case that you're referring to? 6 A. The VW situation. 7 Q. Okay. All right. To what extent did Mr. Onorato 8 directly participate in your investigation? 9 A. He participated in the meetings that -- there were 10 a couple meetings, as I recall. One in early August, maybe 11 around the 2nd, that I told you about when -- 12 Q. You met with the County officials. 13 A. When we met with the County officials and 14 expressed our concerns about, you know, what was going on. 15 You know, as far as the hearing had been and as far as these 16 other concerns about possible disclosure of information. 17 And then he indicated it would be appropriate to review the 18 e-mails, which we did. And then having done that, we got 19 back together, again, I believe a couple of days before 20 this, of August 20th. And we sat down again, and I laid out 21 for him -- 22 MR. LANE: Can I put something on the record here, 23 because Mr. Lanzillo is not here, and I'm just a 24 little uncomfortable at this point. I can't 25 instruct this witness not to answer questions</p>	<p>1 MR. LANE: Yeah, and I'm not accusing you of doing 2 anything. 3 MR. McNAIR: No. 4 MR. LANE: I know the witness is trying to be 5 helpful, and I want to lay it out there that 6 communications -- 7 MR. McNAIR: Right. 8 MR. LANE: -- between the County employees and 9 Mr. Onorato are protected by privilege. 10 MR. McNAIR: Well, I'm not sure who is the lawyer 11 in that situation. But I think either side has 12 the right to raise the privilege. 13 MR. JOYAL: Well, to the extent, as well, that 14 there may be conversations between Mr. Taft and 15 employees of the County regarding that and 16 Mr. Taft -- 17 MR. McNAIR: And I haven't asked about any 18 conversations with Mr. Taft. 19 MR. JOYAL: I'm just raising it so that it doesn't 20 come up. 21 MR. McNAIR: I know, and that's why I gave 22 Mr. Lane -- I said I would agree to his stating. 23 I don't think you have standing to raise that 24 objection, and I would appreciate you keeping your 25 yap shut.</p>

23 (Pages 89 to 92)

89	91
<p>1 MR. JOYAL: Well, I think, Mr. McNair, if we go 2 back on the record, you gave -- 3 MR. McNAIR: We're on the record. 4 MR. JOYAL: -- both of us standing on behalf of 5 Mr. Lanzillo's -- 6 MR. McNAIR: I think that I limited that to 7 Mr. Lane. 8 MR. JOYAL: I mean, it doesn't matter, Mr. McNair. 9 You can do whatever you want. 10 MR. LANE: Anyway, raising an objection and 11 instructing the witness not to answer are two 12 different things. You know, I don't -- 13 MR. McNAIR: I would hope that we would not get to 14 that point, okay. 15 MR. LANE: Where I have to instruct him not to 16 answer -- 17 MR. McNAIR: If you would feel that it would be 18 appropriate for Mr. Lanzillo to make such an 19 instruction, let me know, because I don't want to 20 cross that line. 21 MR. LANE: Then I would simply think that 22 Mr. Lanzillo would instruct the witness not to 23 reveal -- 24 MR. McNAIR: And I think that the witness has kind 25 of gone beyond my question. So why don't we just</p>	<p>1 MR. LANE: Objection to form. Requires 2 speculation. 3 A. Yeah, I wouldn't know the answer to that. He may 4 have or he may not have. 5 Q. To your knowledge, he didn't, though, right? Or 6 did he? 7 A. Not as far as I know. 8 Q. I'm just asking you what you know. 9 A. Not as far as I know. I have no reason to believe 10 that he did another investigation after I did. 11 Q. You state that, "BAC reproduced the entire 12 employees received and deleted e-mails for the period 1/1/04 13 to 8/12/04." 14 A. Yeah. 15 Q. And is that based on the representation of BAC 16 that those were all of those e-mails? 17 A. Right. That's what I asked them to do and that's 18 what they told me they had done. 19 Q. Okay. 20 A. The e-mails and some Word documents also. 21 Q. Were any other documents on the hard drive copied? 22 A. Other than? 23 Q. Word documents. Were there other -- I don't know. 24 A. That's what I was told. You know, I don't know, 25 Mr. McNair, to the best I can answer.</p>
90	92
<p>1 end the response to that question right there. 2 MR. LANE: That's fine. 3 MR. McNAIR: Let me ask another one, and we'll see 4 if we can get this done. 5 BY MR. McNAIR: 6 Q. I had asked you about Mr. Onorato's direct 7 participation in the investigation. I know that you did a 8 lot of the legwork here. You read through 2000 e-mails or 9 so and you made this report and put these documents 10 together. Do you know whether or not Mr. Onorato reviewed 11 all those e-mails? 12 A. I believe that he did not. 13 Q. Okay. And do you know whether or not Mr. Onorato 14 talked to any of the witnesses to any of these events in 15 connection with this investigation? 16 A. To the extent that you're asking me if he 17 conducted the investigation, my understanding, my belief is 18 that he did not. He received the results of what I did. 19 Q. Okay. 20 A. Okay. 21 Q. And for purposes of Mr. Onorato's decision-making 22 or actions thereafter, would it be fair to say that 23 Mr. Onorato did not independently verify the information 24 that you provided in your report but relied upon the -- your 25 conclusions and findings in your report?</p>	<p>1 Q. Get to -- you concluded, general review. What do 2 you mean by "general review"? 3 A. What are you referring to? 4 Q. Page 2, second full paragraph, first sentence. 5 A. Having gone through essentially, Mr. McNair, what 6 was a file drawer, probably about this long (indicating) of 7 e-mails, that's what I meant by a general review. 8 Q. There's that many e-mails? 9 A. That's what was printed out for me. 10 Q. I mean, we requested those to be produced, and 11 they weren't. Once again. 12 A. I'm just -- 13 Q. No, I'm just, I'm sorry -- 14 A. -- telling you what I read, sir. 15 Q. You know, we've had some difficulty in getting 16 some discovery in this case, and it just keeps going on. 17 A. But it was a review of -- 18 Q. 2000 e-mails, give or take. 19 A. Probably a couple thousand e-mails, yeah. 20 Q. And you said there was a pattern of improper use 21 of the computer; first, using it as an instant messenger to 22 maintain discussions with Deanna Cosby. Business related -- 23 second, business-related discussions. And data storage. Is 24 it safe to say those are three violations of the computer 25 usage policy that you identified as a result of your</p>

24 (Pages 93 to 96)

<p style="text-align: right;">93</p> <p>1 examination of e-mails?</p> <p>2 A. Yeah, I said -- you know, it was -- it was sort of</p> <p>3 an instant messenger type. I mean, not a pure instant</p> <p>4 message arrangement with Ms. Cosby, but they went back and</p> <p>5 forth, you know, several times during the day.</p> <p>6 Q. I think I know what you mean. Ed and I do that.</p> <p>7 A. So business-related as opposed to not</p> <p>8 employment-related discussions. And she used her County</p> <p>9 computer to store some of her educational stuff and/or to</p> <p>10 work on it or whatever, it was there. So, I mean, that</p> <p>11 was -- that was the computer usage policy which frankly was,</p> <p>12 you know, not a big deal in the overall scheme of things,</p> <p>13 but.</p> <p>14 Q. Okay.</p> <p>15 A. This was generated -- this was generated for</p> <p>16 Mr. Onorato to summarize, if you will, the areas of concern,</p> <p>17 you know, some obviously more serious than others.</p> <p>18 Q. Now, there's a heading called Item No. 1, breach</p> <p>19 of confidentiality. And you state, "Unbeknownst to the</p> <p>20 mother, the Agency had obtained a prognostic detention</p> <p>21 order allowing placement of her newborn at the time of</p> <p>22 birth."</p> <p>23 A. Um-hum.</p> <p>24 Q. How do you know that the mother didn't know about</p> <p>25 that?</p>	<p style="text-align: right;">95</p> <p>1 file.</p> <p>2 Q. Okay.</p> <p>3 A. In the VW case. I looked at some of the documents</p> <p>4 from the Court record, the prognostic detention order, the</p> <p>5 letter requesting it, some of the pleadings, the initial</p> <p>6 pleadings in the case, you know, at some point in time. I</p> <p>7 don't know whether before or after this document was</p> <p>8 generated. So I -- you know, I want to be as precise as I</p> <p>9 can when I answer your question.</p> <p>10 Q. All right. But your review of whatever documents</p> <p>11 you reviewed in the case files involving VW didn't give to</p> <p>12 you any idea that VW knew that her unborn child was going to</p> <p>13 be detained at birth?</p> <p>14 A. No, I wouldn't -- no, I had no reason to look at</p> <p>15 that. On June 4th, your client sent an e-mail to Ms. Cosby</p> <p>16 telling her that the mother essentially did not know it.</p> <p>17 Q. And --</p> <p>18 A. So. No, I didn't go beyond that at all.</p> <p>19 Q. I mean, are you willing to stipulate that my</p> <p>20 client is omniscient? Okay. You didn't go beyond that?</p> <p>21 A. I don't know. I don't think I am, no.</p> <p>22 Q. Okay, I didn't think you would be. Okay. So</p> <p>23 when you make this statement, "Unbeknownst to the mother,"</p> <p>24 that really should say according to Ms. Conley, unbeknownst</p> <p>25 to the mother.</p>
<p style="text-align: right;">94</p> <p>1 A. Your client said she didn't know.</p> <p>2 Q. How do you know my client knew whether or not she</p> <p>3 knew?</p> <p>4 A. I'm just taking her at what she said. She told</p> <p>5 Ms. Cosby that the mother didn't see it coming.</p> <p>6 Q. I understand that.</p> <p>7 A. So I'm just taking her at what she said.</p> <p>8 Q. Did you take any other steps other than relying on</p> <p>9 my client's good word to determine whether that statement</p> <p>10 was true?</p> <p>11 A. I didn't.</p> <p>12 Q. For example, did you talk to the mother?</p> <p>13 A. No.</p> <p>14 Q. Did you talk to the mother's attorney?</p> <p>15 A. No.</p> <p>16 Q. Did you talk to the children's attorney?</p> <p>17 A. No.</p> <p>18 Q. Did you talk to anybody to determine whether or</p> <p>19 not the mother actually knew about that?</p> <p>20 A. No.</p> <p>21 Q. Did you review the case file involved of VW?</p> <p>22 A. No. Let me --</p> <p>23 Q. Do you know --</p> <p>24 A. Let me be as precise as I can about the answer to</p> <p>25 that question. I never reviewed the quote/unquote case</p>	<p style="text-align: right;">96</p> <p>1 A. No. No. Your client said that. And the normal</p> <p>2 course of business that we follow at the Agency in obtaining</p> <p>3 a prognostic detention order would have been to do it ex</p> <p>4 parte without notice.</p> <p>5 Q. Would anybody be surprised that you got that order</p> <p>6 in this particular case?</p> <p>7 MR. LANE: Objection to form.</p> <p>8 A. I have no idea. I don't how to answer that.</p> <p>9 Q. Would it be unfair to say that in virtually every</p> <p>10 case similar to the VW case, the Agency would move for a</p> <p>11 detention hearing?</p> <p>12 A. You can't say that.</p> <p>13 Q. Okay.</p> <p>14 A. Every case is not the same. You know.</p> <p>15 Q. I understand.</p> <p>16 A. You do it case by case.</p> <p>17 Q. All right. And what was it in your review of the</p> <p>18 e-mail that led you to believe that Ms. Conley had seen a</p> <p>19 copy of that order?</p> <p>20 A. There was nothing in the e-mail that led me to</p> <p>21 specifically believe that she had seen a copy of the order.</p> <p>22 What she said was that the caseworker had obtained the</p> <p>23 prognostic detention order and that she had disseminated it</p> <p>24 to all the local hospitals, which would have been our</p> <p>25 practice, and that VW did not see it coming. Whether she</p>

25 (Pages 97 to 100)

<p style="text-align: right;">97</p> <p>1 actually saw the order or not was irrelevant to me. She was 2 disclosing the existence of it.</p> <p>3 Q. The --</p> <p>4 A. And the fact that it had been disseminated to the 5 hospitals, and as Ms. Cosby would well know, in an effort to 6 ensure that if the child were born at a local hospital, the 7 child would be removed from the care of the mother at that 8 time.</p> <p>9 Q. Right. And that's something that the Agency has 10 done in hundreds of cases over the past years, several 11 years.</p> <p>12 A. I don't know as I would say hundreds. Many. 13 Dozens, at least.</p> <p>14 Q. Do you recall any instance -- do you recall any 15 instance where a Court has denied an Agency request for such 16 an ex parte prognostic detention order?</p> <p>17 A. No.</p> <p>18 Q. Never -- there's never been one denied, has there?</p> <p>19 A. I'm not aware that there ever has been.</p> <p>20 Q. And you don't believe it's over 100 cases that 21 this has been done in over the last ten years; maybe a dozen 22 or so?</p> <p>23 A. Over the last ten years, over 100?</p> <p>24 Q. Yeah.</p> <p>25 A. Oh, yeah, I would say probably.</p>	<p style="text-align: right;">99</p> <p>1 recall.</p> <p>2 Q. All right. And was Ms. Jones a neophyte in this 3 business?</p> <p>4 A. No.</p> <p>5 Q. She was experienced, had handled numerous cases.</p> <p>6 A. I don't know as I would characterize it as 7 numerous. Her experience was more in the termination area. 8 She had done some dependency cases in my experience, not a 9 whole lot of them. She had done a lot more work in 10 termination trials representing children and parents. But 11 in that context would have become well familiar with the 12 procedure.</p> <p>13 Q. And is that the kind of advice that you would have 14 expected Ms. Jones to give to her client?</p> <p>15 A. I don't know.</p> <p>16 Q. In light of your experience?</p> <p>17 A. I don't know. I mean --</p> <p>18 Q. Okay. So you believed --</p> <p>19 A. I don't know -- I don't know -- Mr. McNair, I 20 don't know enough about the facts of the VW -- I'm sorry, 21 the VW case to be able to tell you whether the prognostic 22 detention order -- whether I would have agreed that it was 23 suitably sought. I don't -- you know, I didn't know. I 24 wasn't involved in it. I don't know. And I still don't.</p> <p>25 Q. Do you recall a case where a woman has two</p>
<p style="text-align: right;">98</p> <p>1 Q. Okay.</p> <p>2 A. That may be low. I mean, I really don't know, 3 Mr. McNair.</p> <p>4 Q. Okay.</p> <p>5 A. There's a lot of them. I'm not going to say that 6 there's not.</p> <p>7 Q. And what is it that makes you believe that VW 8 wouldn't know that this order is going to be entered in her 9 case?</p> <p>10 (Discussion held off the record.)</p> <p>11 A. The only thing that I can specifically point to in 12 this case, other than what I've already told you, which is 13 that we didn't give her any notice and didn't give her 14 lawyer any notice, and that we wouldn't normally tell her, 15 is that according to your client, in her e-mail to 16 Ms. Cosby, VW was advised by her counsel that the Agency 17 couldn't and wouldn't get a detention order. So that also.</p> <p>18 Q. Okay. And you know who VW's attorney was --</p> <p>19 A. Sure.</p> <p>20 Q. -- at the time. Amy Jones.</p> <p>21 A. Yes.</p> <p>22 Q. And do you know whether there has been any other 23 cases where Amy Jones has been representing a parent where 24 there's been such an order entered?</p> <p>25 A. I don't know one way or the other. I don't</p>	<p style="text-align: right;">100</p> <p>1 children in placement and becomes pregnant where you did not 2 seek a prognostic detention order that you were involved in?</p> <p>3 A. To give you a name, not specifically, no. But I 4 know that there have been cases where we have not, sure.</p> <p>5 Q. All right.</p> <p>6 MR. JOYAL: Without trying to limit Mr. McNair or 7 Mr. Angelone's examination of this witness, it's 8 20 minutes of 1:00. Mr. Onorato is scheduled to 9 be deposed at 1:00. I don't know how much longer 10 you guys have with him. But I'm going to 11 represent to you that I'm going to have at least 12 an hour and a half with him.</p> <p>13 So my suggestion is that if this is going to 14 go on much longer and there's going to be 15 redirect, that either a decision be made as to 16 whether Mr. Onorato sticks around here or whether 17 we bring in dinner, because we may be here all 18 night.</p> <p>19 MR. LANE: Well, here's the catch. Mr. Onorato 20 has to leave at 4:20. His depo was scheduled for 21 1:00. And there was another depo scheduled for 22 3:00 so I think -- or 3:30, it was reasonable for 23 him to presume that he could make his appointment 24 at 4:30. So that's the other catch.</p> <p>25 (Discussion held off the record.)</p>

26 (Pages 101 to 104)

101	103
<p>1 (Recess held from 12:40 p.m. to 1:30 p.m.)</p> <p>2 MR. JOYAL: I'm going to put on the record that</p> <p>3 Mr. Knox came in. He's the County Solicitor.</p> <p>4 BY MR. McNAIR:</p> <p>5 Q. Before the break we were talking about your</p> <p>6 August 20th letter to John Onorato, your investigation of</p> <p>7 the allegations against Ms. Conley. In that first paragraph</p> <p>8 under the heading, Item No. 1, breach of confidentiality,</p> <p>9 you say, "According to Attorney Allgeier, the mother had</p> <p>10 made statements to the effect that she might flee the</p> <p>11 jurisdiction with this child at birth or shortly thereafter</p> <p>12 if the Agency was indicating it might place the child." Do</p> <p>13 you see that in there?</p> <p>14 A. Um-hum.</p> <p>15 Q. Did you have any other source of that information</p> <p>16 than Attorney Allgeier?</p> <p>17 A. At some point in time, and I don't know whether it</p> <p>18 was when this memo was written or after that, I believe</p> <p>19 there was actually an e-mail that referenced that, that your</p> <p>20 client made. That's by recollection. That's the best I can</p> <p>21 tell you, but I think that there's -- or maybe -- maybe</p> <p>22 not -- no. Maybe not an e-mail. Maybe something in the</p> <p>23 case record that Mrs. Conley had prepared as part of her</p> <p>24 duties as a case aide. Somewhere. There was something in</p> <p>25 writing. And I can't remember which, Mr. McNair.</p>	<p>1 attached, speaks to the obligation of staff to keep</p> <p>2 confidential those things that are going on within the</p> <p>3 confines of the Agency generally. That was what I was</p> <p>4 referring to.</p> <p>5 Q. Can you refer me to the part of the policy that</p> <p>6 you believe was violated.</p> <p>7 A. I think the entire policy was violated by the</p> <p>8 disclosure of a confidential Court order that an Agency</p> <p>9 employee knew full well was confidential and that was</p> <p>10 disclosed in a way to completely undermine the efforts of</p> <p>11 the Agency to keep that child safe.</p> <p>12 Q. So the answer is then you cannot identify a</p> <p>13 particular provision of the confidentiality policy you</p> <p>14 allege Ms. Conley violated.</p> <p>15 A. She violated the Agency's policy of keeping</p> <p>16 confidential those things that are set in place to protect</p> <p>17 the safety of children with whom we are charged to protect</p> <p>18 their safety.</p> <p>19 Q. Okay. And, I'm sorry, but that didn't really seem</p> <p>20 responsive to my question. And the question is, what is --</p> <p>21 A. Go ahead.</p> <p>22 Q. You say it's a clear violation. Is this of the</p> <p>23 confidentiality policy?</p> <p>24 A. It says of Agency confidentiality policy.</p> <p>25 Q. All right. Are you referring by that to a written</p>
102	104
<p>1 Q. Okay. And did you ever ask VW whether or not that</p> <p>2 was her intention?</p> <p>3 A. I never spoke to VW.</p> <p>4 Q. Is there a reason why?</p> <p>5 A. Yeah. She was a party in a case to which we were</p> <p>6 adverse to her, and she was represented by counsel.</p> <p>7 Q. Okay. And you didn't speak to VW's counsel or ask</p> <p>8 her to let you talk to her client about this particular</p> <p>9 issue.</p> <p>10 A. I did not.</p> <p>11 Q. Do you know whether or not VW's telephone number</p> <p>12 was listed?</p> <p>13 A. No.</p> <p>14 Q. Do you know whether or not VW's Erie attorney's</p> <p>15 telephone number was listed?</p> <p>16 A. I would presume that Ms. Jones had a phone listing</p> <p>17 that would be available to the public, but I never checked.</p> <p>18 Q. Now, you state that, "The disclosure of the</p> <p>19 existence of the prognostic detention order is a clear</p> <p>20 violation of Agency confidentiality policy." Can you</p> <p>21 indicate to me where in the confidentiality policy makes</p> <p>22 that releasing information concerning matters of record to</p> <p>23 be a violation.</p> <p>24 A. Well, the confidentiality policy of the Agency,</p> <p>25 which is -- which, you know, there are a couple of them</p>	<p>1 policy?</p> <p>2 A. I am referring to the written policies and the</p> <p>3 general policy that the Agency has regarding not disclosing</p> <p>4 information that is treated and to be treated</p> <p>5 confidentially.</p> <p>6 Q. Okay. And I asked you, and I'll ask you again,</p> <p>7 then, which provision of the written policy in particular</p> <p>8 was violated?</p> <p>9 A. There is no specific written subparagraph in any</p> <p>10 of those policies that says to a worker you are not</p> <p>11 permitted to disclose the existence of a prognostic</p> <p>12 detention order. Nonetheless, staff members who work for</p> <p>13 the Erie County Office of Children and Youth, by virtue of</p> <p>14 their training around the issue of confidentiality and the</p> <p>15 work that we do, would know that the disclosure of this type</p> <p>16 of information to a parent who is being kept from getting it</p> <p>17 in the first place would be, in effect, the cardinal sin, if</p> <p>18 you will, of a violation of confidentiality. It is</p> <p>19 probably --</p> <p>20 Q. I'm sorry, I don't mean to interrupt you, but</p> <p>21 that's not really responsive to my question. Okay. I was</p> <p>22 asking you if there's a particular written provision, and my</p> <p>23 understanding is that you cannot identify a particular</p> <p>24 written provision.</p> <p>25 A. I said that.</p>

27 (Pages 105 to 108)

105	107
<p>1 Q. Okay. So this is just a general something you 2 should know if you work for Children Services. 3 A. Sure. 4 Q. Okay. And is there any particular training that 5 is given to employees to instruct them in confidentiality, 6 or are they just supposed to know that? 7 A. Well, employees ongoingly are reminded of their 8 obligation to keep confidential information that they obtain 9 in the course of their employment, and to not disseminate it 10 in a way that would subvert the obligations that they have 11 as employees and in a way that would not subvert the 12 function of the Agency, which is to protect the safety of 13 children. That is basic. That is a rudimentary principle 14 of operation of any child welfare agency in my experience. 15 Q. Okay. And now, you attached some e-mails to this 16 report. I think I have all of them attached to the exhibit. 17 If I don't, correct me. From -- 18 A. Well, I'm going to accept your representation that 19 you did, and that the only thing that's not attached is the 20 Tripp Bible stuff. So I'll operate on that theory, if 21 that's all right with you. 22 Q. That's fine. 23 A. Okay. 24 Q. They run from May 27th to August 20th. Or 25 July 20th, I'm sorry. Is that correct?</p>	<p>1 MR. JOYAL: I'm going to object. The document 2 speaks for itself. The words confidentiality or 3 anything such as that are not even included in her 4 e-mail to Deveney. 5 A. Yeah. I'm not sure I can read it that way. I 6 don't know exactly what she's asking for, Tim, to be honest 7 with you. 8 Q. Well, did you read Ms. Deveney's response? 9 A. Yeah. 10 MR. JOYAL: Which is where? 11 A. That's on top of this page? 12 Q. Right. 13 A. At July 9th, 2004, 12:53 p.m. 14 Q. That would be correct. 15 A. Yeah, I'm reading it now. Yes. Okay. 16 Q. And it says that, "Various concerns about 17 confidentiality were discussed, including a case in Tammy 18 Petrucelli's unit, the C case at great length, and concerns 19 about emotional involvement." But above that it says, "It 20 is expected that confidentiality will be maintained 21 regarding the recent incident in our unit." Do you know 22 what recent incident she's referring to? 23 A. I believe that that had to do with the PW 24 situation. 25 Q. Okay.</p>
106	108
<p>1 A. Well, if you say so. I mean, I didn't -- 2 Q. Well, that's what you say in your report. 3 A. Okay. 4 Q. May 27, 2004 to July 20, 2004. 5 A. Okay. 6 Q. Now, among those e-mails is an e-mail exchange 7 between Abby Conley and Sue Deveney on July 9th, 2004. Are 8 you -- can you find that in there? 9 A. Maybe if you can just give me a -- these things 10 are not paginated, you know, numerically, so. July 9th of 11 2004 from Abby to Sue; is that -- 12 Q. Right. And then Sue's response. 13 A. And then Sue's response. 14 Q. Okay. 15 A. Okay. 16 Q. And that e-mail from Abby, you would agree with me 17 is a request for instruction or clarification of the 18 confidentiality policy, correct? 19 A. Let me see here. You asked me if Ms. Conley's 20 e-mail to Ms. Deveney is a request for clarification of the 21 confidentiality policy? 22 Q. Let me withdraw that. You would agree that her 23 initial -- her e-mail to Ms. Deveney is requesting 24 clarification of instructions given to her by Deveney 25 regarding confidentiality. Or not?</p>	<p>1 A. That's my belief. I mean, it doesn't say that 2 here, but that -- time line wise, that would probably be 3 what we're talking about here. 4 Q. And that paragraph ends, "Should this expectation 5 not be followed, sanctions will be given out accordingly." 6 A. It reads, "According to the directive I received 7 from administration --" 8 Q. Okay. 9 A. "-- should this expectation not be followed, 10 sanctions will be given out accordingly." 11 Q. So do you take that to mean that Ms. Deveney was 12 instructed by administration to give Ms. Conley a warning 13 about confidentiality and tell her that there would be 14 sanctions if there were further violations in the future? 15 MR. LANE: Objection to form. 16 Q. Is that how you would understand that? 17 A. I don't understand it in any way other than the 18 way that it's written. You know, there are specific 19 provisions under the Disciplinary Code of the Pennsylvania 20 Social Services Union to which Ms. Conley belonged that talk 21 about how sanctions are meted out and what warnings are 22 given and in what formats they're given. So I don't 23 interpret this as a warning or a directive -- you know, an 24 indication of Ms. Conley that she was receiving a warning. 25 This is -- it says what it says, and I wouldn't want to</p>

28 (Pages 109 to 112)

109	111
<p>1 characterize it beyond that.</p> <p>2 Q. So you wouldn't interpret that as a warning.</p> <p>3 A. I wouldn't -- no, I wouldn't -- no, a warning -- a</p> <p>4 warning is -- a warning is a formal thing that happens</p> <p>5 within the confines of the PSSU disciplinary proceeding.</p> <p>6 Q. I'm not saying that it's a warning with the terms</p> <p>7 of the Collective Bargaining Agreement. I think that you</p> <p>8 and I can agree that, as far as you know, Ms. Conley was</p> <p>9 never given any warning under the Collective Bargaining</p> <p>10 Agreement or the County Progressive Discipline Policy before</p> <p>11 she was terminated, was she?</p> <p>12 MR. LANE: Objection to form.</p> <p>13 MR. JOYAL: Argumentative.</p> <p>14 A. Do I answer that? As far as I know?</p> <p>15 Q. I would appreciate it.</p> <p>16 A. As far as I know, she was not.</p> <p>17 Q. Right. Okay. But in the general sense of telling</p> <p>18 somebody not to do something, and warning them that there</p> <p>19 are going to be consequences, you would agree with me that</p> <p>20 this is a warning.</p> <p>21 A. You know, I would treat it more as a stern</p> <p>22 reminder to maintain the confidentiality of what's going on</p> <p>23 the way you are supposed to.</p> <p>24 Q. And what further breaches of confidentiality did</p> <p>25 you discover Ms. Conley to commit after July 9th, 2004?</p>	<p>1 Q. And where do you refer to that in your report?</p> <p>2 A. Item 5. That discussion --</p> <p>3 Q. Okay. We'll get to that. What others?</p> <p>4 MR. JOYAL: Well, wait a minute. He wants to</p> <p>5 answer the question. You asked him what he had.</p> <p>6 He has a right to answer your question.</p> <p>7 MR. McNAIR: I don't need him to elaborate on it;</p> <p>8 I need him to identify it. Will you please not</p> <p>9 interrupt. Let me ask the questions.</p> <p>10 MR. JOYAL: Mr. Cauley, you can answer the</p> <p>11 question any way you want.</p> <p>12 MR. McNAIR: He's answered the question.</p> <p>13 BY MR. McNAIR:</p> <p>14 Q. What others beyond discussion with Kim Peebles?</p> <p>15 A. Okay, guys, whose rules am I playing by?</p> <p>16 Q. The rules of the Federal Court.</p> <p>17 A. No, no, no, no. Just somebody tell me what I'm</p> <p>18 supposed to do here.</p> <p>19 Q. Answer the question, please.</p> <p>20 MR. JOYAL: Whichever way you feel appropriate</p> <p>21 under the rules of the Federal Court.</p> <p>22 A. Okay. She committed a violation of the</p> <p>23 confidentiality policy that she was specifically advised by</p> <p>24 Ms. Deveney on July 9th of 2004 not to do again, when she</p> <p>25 had conversations on August 2nd, 2004 with Kim Peebles again</p>
110	112
<p>1 MR. LANE: Objection to the form.</p> <p>2 MR. McNAIR: Excuse me?</p> <p>3 MR. LANE: Objection to form.</p> <p>4 MR. McNAIR: What's the matter with the form?</p> <p>5 MR. LANE: You used the word "further". Further</p> <p>6 than what? Further than the --</p> <p>7 MR. McNAIR: Further than the ones alleged in the</p> <p>8 e-mail of July 9th.</p> <p>9 MR. LANE: I'm sorry. Further than PW? Further</p> <p>10 than beyond July 9th that were committed beyond</p> <p>11 July 9th? Or further prior to July 9th that were</p> <p>12 discovered following July 9th? That's my</p> <p>13 objection.</p> <p>14 MR. McNAIR: Okay. Well, let me see if I can make</p> <p>15 it a little more clear.</p> <p>16 BY MR. McNAIR:</p> <p>17 Q. To your knowledge, did Ms. Conley commit any</p> <p>18 breaches of confidentiality after this July 9th e-mail</p> <p>19 exchange?</p> <p>20 A. Oh, you bet she did.</p> <p>21 Q. What were those?</p> <p>22 A. She had a discussion with Kim Peebles.</p> <p>23 Q. Who is Kim Peebles?</p> <p>24 A. Kim Peebles is a supervisor over the clerical unit</p> <p>25 at the Office of Children and Youth.</p>	<p>1 about the PW situation.</p> <p>2 Q. Okay.</p> <p>3 A. She also -- well, that would be the essence --</p> <p>4 that would be the essence of that. There was more in that</p> <p>5 conversation, but it wasn't as much of a confidentiality --</p> <p>6 Q. Like I said, we'll get to that. I'm trying to</p> <p>7 develop a list here.</p> <p>8 A. Okay.</p> <p>9 Q. What else?</p> <p>10 A. After July 9th?</p> <p>11 Q. After she was warned on July 9th, what did she do</p> <p>12 wrong, beside talk to Ms. Peebles?</p> <p>13 A. On July 20th she sent an e-mail to Deanna Cosby</p> <p>14 indicating, "I forgot to tell you. I met with Char and Pam</p> <p>15 for two hours yesterday. Oh, what a mess. Wait till I tell</p> <p>16 you what they said."</p> <p>17 Q. Okay.</p> <p>18 A. Which would certainly not be an appropriate thing</p> <p>19 for her to be discussing with someone who was not employed</p> <p>20 at the Agency.</p> <p>21 Q. What was she discussing?</p> <p>22 A. Apparently, the contents of the conversation she</p> <p>23 had with her supervisor and her program director.</p> <p>24 Q. And what were the contents of that conversation</p> <p>25 that she disclosed?</p>

29 (Pages 113 to 116)

<p style="text-align: right;">113</p> <p>1 A. Something I would presume would be job-related.</p> <p>2 Q. I'm not asking for your presumption; I'm asking</p> <p>3 you for your knowledge.</p> <p>4 A. That's what I'm telling you.</p> <p>5 Q. With all due respect. You don't have any</p> <p>6 knowledge, do you?</p> <p>7 A. Only what I've told you, sir.</p> <p>8 Q. You don't know that any confidential information</p> <p>9 was released as a result of that e-mail.</p> <p>10 A. Only what I've told you, sir.</p> <p>11 Q. And you've told me, if I understand you correctly,</p> <p>12 that you don't know of any confidential information</p> <p>13 released --</p> <p>14 A. I don't know the subject of the conversation, no,</p> <p>15 sir.</p> <p>16 Q. How do you know it was confidential, then?</p> <p>17 A. Because it was related to the scope and terms of</p> <p>18 her employment by which she indicated the terms of her</p> <p>19 conversations with her supervisor and her program director.</p> <p>20 Q. There is a rule at OCY if you get yelled at by</p> <p>21 your boss, you're not allowed to talk to anybody about it;</p> <p>22 is that what you're saying?</p> <p>23 A. No.</p> <p>24 Q. Okay. I don't understand then how you conclude</p> <p>25 that this implicates the confidentiality policy.</p>	<p style="text-align: right;">115</p> <p>1 A. What are you talking about?</p> <p>2 Q. Char and Pam. Witnesses that are always available</p> <p>3 to you without any impediment whatsoever. And you didn't</p> <p>4 talk to them, did you?</p> <p>5 MR. LANE: Object to the form.</p> <p>6 A. Not about that conversation.</p> <p>7 MR. McNAIR: What's wrong with the form?</p> <p>8 MR. LANE: Lots of things. Under your control was</p> <p>9 one thing. I don't know what that means.</p> <p>10 MR. McNAIR: Available to you, excuse me. What</p> <p>11 else?</p> <p>12 MR. LANE: I think that's probably it.</p> <p>13 MR. McNAIR: Okay.</p> <p>14 BY MR. McNAIR:</p> <p>15 Q. Char and Pam were always available to you. And</p> <p>16 you could have asked them any time about that when you saw</p> <p>17 this e-mail, and you didn't do that; is that correct?</p> <p>18 A. I don't recall that I did. I don't believe that I</p> <p>19 did, no.</p> <p>20 Q. If you did, you didn't put it in your report.</p> <p>21 A. True.</p> <p>22 Q. What other breaches of confidentiality do you</p> <p>23 maintain that Ms. Conley committed after July 9th, 2004?</p> <p>24 A. Nothing that's reflected here.</p> <p>25 Q. Is there anything reflected anywhere or any</p>
<p style="text-align: right;">114</p> <p>1 A. Well, I think when you look at the overall</p> <p>2 willingness of your client to --</p> <p>3 Q. I'm not asking you about that, sir, with all due</p> <p>4 respect.</p> <p>5 A. No, I'm --</p> <p>6 Q. I'm asking you with regard to this particular</p> <p>7 e-mail exchange, you were simply making a presumption based</p> <p>8 on other things that you think you know; is that fair?</p> <p>9 MR. JOYAL: Objection to form. Argumentative.</p> <p>10 A. I'm making a conclusion based on other things that</p> <p>11 I do know.</p> <p>12 Q. Okay. But as far as you know, there was no</p> <p>13 disclosure of any confidential information between Abby</p> <p>14 Conley and Deanna Cosby on or about July 20th --</p> <p>15 A. True.</p> <p>16 Q. -- 2004. Okay. And what did Char and Pam tell</p> <p>17 you was the subject of that discussion on July 19th with</p> <p>18 Ms. Conley?</p> <p>19 A. I don't recall that I had any discussions with</p> <p>20 them about that.</p> <p>21 Q. All right. So you have what you think is evidence</p> <p>22 of a breach of confidentiality and a violation of Agency</p> <p>23 policy that names two witnesses under your control. And, if</p> <p>24 I understand you correctly, you didn't speak to either of</p> <p>25 them, did you?</p>	<p style="text-align: right;">116</p> <p>1 evidence that you are aware of that Ms. Conley made any</p> <p>2 other breaches of confidentiality after July 9th, 2004?</p> <p>3 A. Yeah.</p> <p>4 Q. What evidence is that?</p> <p>5 A. I had a conversation with a foster mother in the</p> <p>6 summer of 2005, who called me and told me that Ms. Conley</p> <p>7 had been in communication with her and was telling her</p> <p>8 things that she shouldn't be telling her about cases that</p> <p>9 she was involved with or had known about. And give me a</p> <p>10 second and I'll try to come up with a name.</p> <p>11 MR. JOYAL: Well, be careful about giving a name.</p> <p>12 THE WITNESS: Okay.</p> <p>13 Q. You can give it to me off the record.</p> <p>14 A. She -- I won't give you the name, but she --</p> <p>15 Q. Well, then forget about it, because if you're not</p> <p>16 going to identify her --</p> <p>17 A. No, no, no, no.</p> <p>18 Q. And --</p> <p>19 A. Just let me finish, please, Mr. McNair. I'm not</p> <p>20 telling you that I won't give you the name. But for</p> <p>21 purposes of my discussion right now, number one, it's on the</p> <p>22 tip of my tongue and I can't come up with it. But she is</p> <p>23 married to a minister. And I may be able to come up with</p> <p>24 it. I think it begins with a B. And I can furnish it to</p> <p>25 you at some point if you would like me to do that, if I can</p>

30 (Pages 117 to 120)

<p style="text-align: right;">117</p> <p>1 remember it or I can probably find it out.</p> <p>2 I don't think that she and her husband still live</p> <p>3 in the area. I believe that they stopped being foster</p> <p>4 parents maybe toward the end of the year and have moved out</p> <p>5 of the area. But she called me; I didn't call her. She</p> <p>6 called me because she was concerned that she was continuing</p> <p>7 to have this contact and that Ms. Conley was telling her</p> <p>8 things that she shouldn't be telling her about cases.</p> <p>9 Q. Okay.</p> <p>10 A. Now, that was after all of this was said and done.</p> <p>11 Q. And did you make any memorandum of that or report</p> <p>12 it?</p> <p>13 A. I made -- I think I made some notes of it, and I</p> <p>14 may still have them someplace.</p> <p>15 Q. Would you produce those?</p> <p>16 A. If I can find them. I'll look for them.</p> <p>17 Q. Other than that incident, are there any other</p> <p>18 instances?</p> <p>19 A. There may be, but I can't specifically recall</p> <p>20 right now, to be honest. There may well be.</p> <p>21 Q. All right. But as far as you can tell us right</p> <p>22 now, you're not aware of any.</p> <p>23 A. Hum-um. Not that come to mind at the moment.</p> <p>24 Q. Now, with regard to that July 20th e-mail</p> <p>25 exchange, would you agree with me that that was initiated by</p>	<p style="text-align: right;">119</p> <p>1 would be.</p> <p>2 Q. As a practical matter, that wouldn't be the kind</p> <p>3 of violation that you would be concerned about it, would it?</p> <p>4 A. Not in a million years.</p> <p>5 Q. Because, in fact, violations such as that are</p> <p>6 commonplace.</p> <p>7 A. Well --</p> <p>8 Q. At OCY.</p> <p>9 A. Well, I could speculate to give you an answer to</p> <p>10 that. I don't know. I would like to think that people do</p> <p>11 what they're supposed to do, but.</p> <p>12 Q. Do you receive personal e-mails, or did you</p> <p>13 receive personal e-mails from people outside the Agency</p> <p>14 while you worked there --</p> <p>15 A. Sure.</p> <p>16 Q. -- on your Agency e-mail?</p> <p>17 A. Sure.</p> <p>18 Q. And did you reply to them?</p> <p>19 A. Occasionally.</p> <p>20 Q. Now, you also talk about Item No. 2 where the</p> <p>21 employee discloses information regarding the drowning death</p> <p>22 of a child under OCY supervision whose caseworker is M</p> <p>23 H</p> <p>24 A. Right. That's the way the e-mails read. It turns</p> <p>25 out that that child was not our kid. That child belonged to</p>
<p style="text-align: right;">118</p> <p>1 Deanna Cosby on July 20th at 2:26 p.m.?</p> <p>2 A. Let me just make sure we're on the same page here,</p> <p>3 okay, Mr. McNair. Would you be good enough to show me what</p> <p>4 you're looking at there in your pile. The problem with</p> <p>5 these e-mails is they're duplicitous in some -- they're</p> <p>6 duplicative --</p> <p>7 Q. Right.</p> <p>8 A. -- in some respects.</p> <p>9 Q. And I'm indicating the bottom of the page. It's</p> <p>10 numbered 3 at the bottom.</p> <p>11 A. Well, that's where it begins on the page. Okay.</p> <p>12 Whether it was actually initiated by Ms. Cosby or is in</p> <p>13 response to something, I don't think you can tell from this.</p> <p>14 But it starts -- the subject is hey, and it starts hey, so.</p> <p>15 I see where you are.</p> <p>16 Q. And then the next message would be the one at</p> <p>17 3:09:06 p.m. from Abby to Deanna, and the subject is --</p> <p>18 well, wait a minute. At 3:05 she asks about a baseball</p> <p>19 game, Abby does. Is that a violation of confidentiality</p> <p>20 policy?</p> <p>21 A. I wouldn't think so.</p> <p>22 Q. Okay.</p> <p>23 A. Not confidentiality.</p> <p>24 Q. Violation of the computer usage policy.</p> <p>25 A. If you want to get hyper-technical, I suppose it</p>	<p style="text-align: right;">120</p> <p>1 Juvenile Probation. In reality, but it --</p> <p>2 Q. It reflects that the employee's supervisor told</p> <p>3 Ms. Conley that that was the case, though, doesn't it?</p> <p>4 A. Let me look at the e-mail, if I may, Mr. McNair,</p> <p>5 so that I can be clear on who is saying what about what.</p> <p>6 This is the May 25th series of e-mails. It looks like it</p> <p>7 starts on a page numbered 2. Does that square with where</p> <p>8 you are, Mr. McNair?</p> <p>9 Q. To me, it appears as if it starts on Page No. 5.</p> <p>10 A. If you would, just show me what you're referring</p> <p>11 to, maybe I can find the same page. I want to be as --</p> <p>12 Q. It appears to be quoting a letter to the editor</p> <p>13 that was published.</p> <p>14 A. Let me see if I can find the page that looks like</p> <p>15 that. Yeah, this -- okay, May 24th, 2004, 8:51 a.m. It</p> <p>16 appears that -- that your client -- she is forwarding this</p> <p>17 letter that was in the paper from a foster mother to</p> <p>18 Ms. Cosby. That's the way I read this. "ECOCY is in the</p> <p>19 paper again. I read part of the story online. They are</p> <p>20 really hammering OCY. Here is a letter that is from the</p> <p>21 foster mom who had the little girl in her home. She is</p> <p>22 sending this to the paper."</p> <p>23 I don't know whether she got that from the paper</p> <p>24 or whether she had the letter and was sending it, or what</p> <p>25 the deal is. But that's -- I see where you are. So, okay.</p>

31 (Pages 121 to 124)

<p style="text-align: right;">121</p> <p>1 And it's been a while, I apologize. What was the question?</p> <p>2 Q. The question was, does that appear to be the</p> <p>3 initial e-mail in that exchange?</p> <p>4 A. Well, yeah. It looks like it's the first of a</p> <p>5 series that continue with the subject line, "We were in the</p> <p>6 paper again today," that goes probably about four or five</p> <p>7 pages.</p> <p>8 Q. Right.</p> <p>9 A. Okay. I see where you are. Thank you.</p> <p>10 Q. Now, with respect to that page numbered 5, is</p> <p>11 there any part of that, that in your opinion, violates the</p> <p>12 OCY confidentiality policy?</p> <p>13 A. No.</p> <p>14 Q. And then if you go to Page 4, there's a response</p> <p>15 from Deanna Cosby, 9:23 a.m. on May 24th. And that's</p> <p>16 followed by a response from Abby on May 24th at 10:33:43</p> <p>17 a.m. where she says, "You're coming home, oh, goody, when?</p> <p>18 You can't write anonymous letters to the paper, they won't</p> <p>19 print them." No part of that exchange violates the policy</p> <p>20 of confidentiality, does it?</p> <p>21 A. Well, I would be a little bit concerned about the</p> <p>22 discussion about whether or not the author of the letter is</p> <p>23 or is not currently a foster parent. I don't really think</p> <p>24 that that's, you know, appropriate.</p> <p>25 Q. Now, that wasn't Abby, was it? That was Deanna</p>	<p style="text-align: right;">123</p> <p>1 A. You bet.</p> <p>2 Q. Ms. Conley stated that she was given instructions</p> <p>3 that no one is to find out about this kid drowning.</p> <p>4 A. Where is that?</p> <p>5 Q. 2:03:01, there's a check mark next to it.</p> <p>6 A. I see. Yeah, it reads, "She gave me looks to</p> <p>7 kill, then told me no one is to find out about this kid</p> <p>8 drowning." That's not even a complete sentence. That's</p> <p>9 what it says. You know, to whom she is referring or what</p> <p>10 that means beyond that, you know, I don't know.</p> <p>11 Q. Now, you state -- and I think this is on the</p> <p>12 second -- third page of your report under Item No. 2. "Abby</p> <p>13 was explicitly encouraging Deanna Cosby to contact Ed</p> <p>14 Palattella at the Erie Times."</p> <p>15 A. Um-hum.</p> <p>16 Q. And could you point to the message from Ms. Conley</p> <p>17 to Ms. Cosby where she explicitly encourages that.</p> <p>18 A. Sure.</p> <p>19 Q. Where is that?</p> <p>20 A. If you go back to where we left off with the</p> <p>21 phrase, and start reading up from there, Ms. Cosby writes to</p> <p>22 her May 25th, 2004, 2:00 p.m. Quote, "I calling the Times</p> <p>23 newspaper," close quote. Abby writes back, "Why." Deanna</p> <p>24 responds, 2:02 p.m., "To tell them about the child dying."</p> <p>25 Response. "You made me laugh out loud." Ms. Cosby's</p>
<p style="text-align: right;">122</p> <p>1 Cosby making those statements.</p> <p>2 A. Well, you asked me if any part of this violated</p> <p>3 the confidentiality policy. And if your client is</p> <p>4 participating in a conversation wherein that topic is the</p> <p>5 subject of discussion, I would say that -- I mean, is it a</p> <p>6 huge problem, like the disclosure of a prognostic detention</p> <p>7 order. It's not anywhere near the same category, but it's</p> <p>8 arguably getting there.</p> <p>9 Q. All right. And then on May 25th, it's on the</p> <p>10 bottom of Page 2, at 1:48:55, Abby writes, "Another one of</p> <p>11 our kids died." Now --</p> <p>12 A. Now --</p> <p>13 Q. -- is that, in your opinion, a violation of</p> <p>14 confidentiality?</p> <p>15 A. Yes.</p> <p>16 Q. In what way?</p> <p>17 A. It's tantamount to a disclosure that the child who</p> <p>18 has been referenced here was under the jurisdiction of the</p> <p>19 Juvenile Court and was a dependent child.</p> <p>20 Q. Okay.</p> <p>21 A. Which would be a violation of the policy and the</p> <p>22 statute, as far as I would believe, that you don't disclose</p> <p>23 that.</p> <p>24 Q. Okay. And that confidentiality extends, then,</p> <p>25 beyond death.</p>	<p style="text-align: right;">124</p> <p>1 response to Abby. "I'm dead serious, no pun intended."</p> <p>2 That's at 2:05 p.m. Response back to Deanna -- or to Deanna</p> <p>3 from Abby, quote, "I double-dog dare you. Ed Palattella is</p> <p>4 the reporter that has run all the stories," close quote.</p> <p>5 Deanna's response back. "Okay, it's done."</p> <p>6 Then further up on that same page when they're</p> <p>7 talking about phone conversations and phone contact,</p> <p>8 Ms. Conley writes to Ms. Cosby, quote, "Okay, go ahead, tell</p> <p>9 Ed everything. 870-1600, press 0 for the operator," close</p> <p>10 quote.</p> <p>11 Q. Okay. And your reading of that led you to believe</p> <p>12 that Ms. Conley seriously was encouraging Ms. Cosby to call</p> <p>13 the newspaper.</p> <p>14 A. Yes.</p> <p>15 Q. You read that as a conspiracy to disclose</p> <p>16 information that the Agency was covering up about a child</p> <p>17 dying.</p> <p>18 MR. JOYAL: Object to the form.</p> <p>19 A. Yeah, I object to the characterization "covering</p> <p>20 up," sir.</p> <p>21 Q. Would not the death of a child under Agency</p> <p>22 protection be something that would be of public concern?</p> <p>23 MR. JOYAL: I'm going to object, because I think</p> <p>24 it was made clear yesterday twice that the child</p> <p>25 who died was not under Agency protection, was a --</p>

32 (Pages 125 to 128)

<p style="text-align: right;">125</p> <p>1 MR. McNAIR: Did I say he was?</p> <p>2 MR. JOYAL: You just did. You were talking about</p> <p>3 this child. And you said covering up the death of</p> <p>4 a child under Agency protection. That's what you</p> <p>5 just said.</p> <p>6 MR. LANE: And I join in that objection because</p> <p>7 that was what you said.</p> <p>8 BY MR. McNAIR:</p> <p>9 Q. Would that be something that would be a matter of</p> <p>10 public concern?</p> <p>11 MR. LANE: Objection to form.</p> <p>12 A. I think any time a child dies, you know, in an</p> <p>13 accidental drowning, it's a matter of public concern.</p> <p>14 Q. Why do you think Ms. Conley was advised by her</p> <p>15 supervisor to keep it a secret?</p> <p>16 A. I don't know that she was.</p> <p>17 Q. Well, I thought you believed everything that Abby</p> <p>18 says.</p> <p>19 A. I don't believe anything your client says.</p> <p>20 Q. Yet you believe her when she says she wants Deanna</p> <p>21 Cosby to call Ed Palattella; you believe that, right?</p> <p>22 A. I'm only reading what she's written to Deanna</p> <p>23 Cosby.</p> <p>24 Q. And you interpret that as encouragement. So you</p> <p>25 believe that that's what she meant.</p>	<p style="text-align: right;">127</p> <p>1 Q. Well --</p> <p>2 A. About this.</p> <p>3 Q. -- let me ask you this. If she is making it up,</p> <p>4 how is that confidential information belonging to the</p> <p>5 Agency?</p> <p>6 A. Whether it -- whether it is or whether it isn't,</p> <p>7 according to this, in her mind, it was. She believed it to</p> <p>8 be so, according to this. And with that belief in mind, she</p> <p>9 disclosed it to someone who was not entitled to have it,</p> <p>10 one. And encouraged that person to further disclose it to a</p> <p>11 newspaper reporter.</p> <p>12 Q. Okay.</p> <p>13 A. If she was mistaken, it doesn't minimize or</p> <p>14 defect from the reality of what she was attempting to do in</p> <p>15 her own mind.</p> <p>16 Q. What did Ms. Deveney say when you asked her in the</p> <p>17 course of this investigation whether or not she did, in</p> <p>18 fact, give Abby Conley that instruction on May 25th?</p> <p>19 A. I never had that discussion with Ms. Deveney.</p> <p>20 Q. So there's another witness with knowledge directly</p> <p>21 implicated in your investigation that you didn't bother to</p> <p>22 speak to.</p> <p>23 A. I've already told you that I didn't discuss this</p> <p>24 particular situation with Ms. Deveney.</p> <p>25 Q. You could have.</p>
<p style="text-align: right;">126</p> <p>1 MR. LANE: Objection to form. Argumentative.</p> <p>2 A. Mr. McNair, if there's some other way to read</p> <p>3 this, you know, I would be open to your suggestion. But the</p> <p>4 way I read it, it is clearly an encouragement to</p> <p>5 Mr. Palattella to tell -- or to Ms. Cosby to tell Ed</p> <p>6 Palattella quote/unquote everything, premised on her belief,</p> <p>7 as it's stated here, that this child was, in fact, a child</p> <p>8 under our care. Her belief, mistaken, but she didn't</p> <p>9 indicate that.</p> <p>10 And, presumably, to tell Mr. Palattella everything</p> <p>11 that is contained at least in this series of e-mails about</p> <p>12 this incident. So, yeah, I would consider that to be</p> <p>13 encouragement of someone who had no business knowing this</p> <p>14 information because it's confidential, at least she believed</p> <p>15 it to be, to a newspaper reporter. I don't know any other</p> <p>16 way to read it.</p> <p>17 Q. Yet you don't believe that she was told by a</p> <p>18 supervisor that a child had died and she was not to tell</p> <p>19 anyone.</p> <p>20 MR. JOYAL: Objection.</p> <p>21 Q. You don't believe that.</p> <p>22 MR. JOYAL: Argumentative.</p> <p>23 A. I don't know whether she was or whether she</p> <p>24 wasn't. I don't know what she was told by Ms. Deveney, or</p> <p>25 any supervisor.</p>	<p style="text-align: right;">128</p> <p>1 A. Sure.</p> <p>2 Q. I mean, you worked in the same office.</p> <p>3 A. Sure.</p> <p>4 Q. Full-time. You're both there all day, five days a</p> <p>5 week at least.</p> <p>6 A. Well, I was there more than she was. She was out</p> <p>7 more than I was, but, yeah.</p> <p>8 Q. Okay.</p> <p>9 A. She was available. I could have discussed it with</p> <p>10 her. I didn't.</p> <p>11 Q. Okay. Now, this next Item No. 3, "Improper</p> <p>12 disclosure of County work product, violation of computer</p> <p>13 usage policy."</p> <p>14 A. Which one are we at?</p> <p>15 Q. Number 3.</p> <p>16 A. Yes, sir.</p> <p>17 Q. This involves, I guess, the JS hearing.</p> <p>18 A. Um-hum.</p> <p>19 Q. Before Judge Kelly. Now, did you review the</p> <p>20 transcript of that hearing in conjunction with this</p> <p>21 investigation to determine whether the sequence of events</p> <p>22 you cite is accurate, that Mr. Villella produced a document</p> <p>23 and handed it to Ms. Conley?</p> <p>24 A. I'm trying to remember in the course of time here</p> <p>25 when that transcript was produced vis-à-vis the date of this</p>

33 (Pages 129 to 132)

<p style="text-align: right;">129</p> <p>1 report, which was August 20th. I can't honestly sit here 2 and tell you that we had that transcript by this time. 3 Q. Okay. 4 A. There was some -- I know there was some delay in 5 its production. And I don't know, frankly, whether I 6 reviewed it before I wrote this or not. 7 Q. All right. 8 A. If that transcript were available and there's a 9 way to tell from a time stamp on it when it was filed, I 10 could maybe tell you that. 11 Q. Okay. I'll accept that. Is it your recollection 12 that Attorney Villella brought the document in with him and 13 handed it to Abby? 14 A. I can't tell you when he was given it. Okay. 15 What I can tell you is only what I recall. I'm at counsel 16 table. We're in Judge Kelly's courtroom. Your client is on 17 the witness stand. She's been called by Mr. Villella. He's 18 at counsel table down here. He approaches her with a 19 document and hands it to her. And essentially says, can you 20 identify this, or whatever the transcript reflects. 21 Now, that was -- that was what I remember. And I 22 remember thinking to myself, where did he get that, where 23 did this come from. Now, I don't -- I've never talked to 24 Mr. Villella about when and where he got that. 25 Q. I was going to ask you that. Why not?</p>	<p style="text-align: right;">131</p> <p>1 the investigation that he asked me to do would reveal. So I 2 attempted to do that. 3 Part of the reason for including this information 4 is that this was -- this was the situation that prompted me 5 to have the initial conversation with Attorney Allgeier on 6 the 28th of July about what was happening in that hearing. 7 Which then prompted her to say to me, oh, you didn't know 8 this, but there are other concerns about Ms. Conley maybe 9 disseminating information to other people. And it was as a 10 result of that collaboration that decisions were made to 11 then look further. 12 So, you know, in terms of this being here, it's 13 here because, number one, she did something she shouldn't 14 have done, in my view. And, number two, I wanted to put it 15 in there to establish why we did what we did. 16 Q. Okay. So this was the actual impetus for your 17 investigation, was that hearing in the JS case. 18 A. Well, this -- the impetus for my investigation 19 really was the request of the County Solicitor that I go 20 back and do all of this. We -- these concerns -- 21 Q. I thought you requested the permission from the 22 County Solicitor to do this. 23 A. No, no. 24 Q. Did he call you up and say, Mike, here's some news 25 for you, I want you to do this?</p>
<p style="text-align: right;">130</p> <p>1 A. Well, probably for the same reason I never talked 2 to your client about it, because I thought about doing it. 3 Q. I'll ask you that too. 4 A. It was pretty much water under the bridge at that 5 point, in terms of the way that case was going. And it 6 really didn't make a lot of difference to the outcome of 7 that case. 8 Q. Did it make any difference to the outcome of your 9 investigation and its impact on Abby and her career with 10 Erie County? 11 A. No. Not -- not to me. In the first place, 12 whether or not her career was impacted at Erie County wasn't 13 my decision. Okay. All I did was provide the information 14 that I was asked to gather. My understanding of the 15 rationale for her being asked to leave was that she 16 disclosed the existence of the order in the VW case. 17 Q. I understand that's the party line at this point. 18 You include this -- 19 A. Well, excuse me. 20 MR. JOYAL: Objection. 21 Q. -- in your report. Why, if it's not significant? 22 MR. LANE: Objection to the question and move to 23 strike the preamble. 24 A. I was asked by the County Solicitor to provide him 25 with the results of any and all confidentiality breaches at</p>	<p style="text-align: right;">132</p> <p>1 A. The concerns that came together at the end of July 2 and beginning of August about your client's behavior as an 3 employee of the Office of Children and Youth prompted us to 4 say to the County, we think we need to look more closely at 5 what she may have been doing to see if there is anything 6 here to document these concerns that we have. 7 Q. Did you share the concerns of the folks that had 8 the meeting the same day, where they were disappointed that 9 there was not enough evidence to terminate Ms. Conley at 10 that point -- 11 MR. JOYAL: Objection. 12 Q. -- on August 30? 13 MR. JOYAL: Lack of foundation. What are you 14 talking about? 15 MR. LANE: I join in that. 16 MR. McNAIR: Join away. 17 A. Can you rephrase that for me. I'm not sure what 18 you're trying to ask me. 19 Q. The point of this investigation was to try to 20 develop evidence to justify terminating Ms. Conley, wasn't 21 it? 22 A. No. The point of the investigation was to find 23 out if Ms. Conley had been doing things improperly in terms 24 of disclosing information to people that had no right to it. 25 Q. Was this investigation prompted by a concern over</p>

34 (Pages 133 to 136)

<p style="text-align: right;">133</p> <p>1 the -- or an alleged disclosure of a Court order in the VW 2 case?</p> <p>3 A. No. We didn't know that until we read the 4 e-mails.</p> <p>5 Q. Right. You didn't have -- but that was the reason 6 she was terminated; is that what you're saying?</p> <p>7 A. That's my understanding. I didn't make the 8 termination decision, okay. But my understanding is the 9 reason that she was terminated by the County, or terminated 10 or resigned or whatever, however that worked out, I wasn't 11 involved in that, was because she had disclosed that -- the 12 existence of that document.</p> <p>13 Q. Who told you that?</p> <p>14 A. I was told that by Mr. Onorato. I was told that 15 by Ms. Liebel. I believe by Pete Callan.</p> <p>16 Q. Okay.</p> <p>17 A. The people that were involved in making the 18 decision.</p> <p>19 Q. So they told you that this JS case had nothing to 20 do with it.</p> <p>21 A. I don't think anybody ever said that to me one way 22 or the other.</p> <p>23 Q. Item No. 5, violations of employee work and 24 conduct responsibilities. The second sentence of that first 25 paragraph you state, "As you are aware, the employee has</p>	<p style="text-align: right;">135</p> <p>1 Q. And are there cases where because of a lack of 2 evidence or not meeting criteria, an incident which happened 3 is determined to be unfounded?</p> <p>4 A. Sure. You can have a situation where, for 5 example, a child is struck by a caretaker, perhaps a mark is 6 left on the child, but because the child -- because the 7 injury doesn't rise to the level of severe pain as defined 8 in the statute, it would not qualify as quote/unquote child 9 abuse.</p> <p>10 Q. And under those circumstances, would that 11 allegation be baseless and untrue?</p> <p>12 A. If it actually happened, the existence of the fact 13 would not be, no.</p> <p>14 Q. Okay.</p> <p>15 A. But in this situation, as I understand it, and as 16 I understood it, the investigating person from DPW, whose 17 name I can't pronounce, had indicated that she had 18 significant concerns about the credibility of the 19 information that your client was supplying.</p> <p>20 Q. And that rendered it baseless and untrue?</p> <p>21 A. Well, I think you can make that argument, sure.</p> <p>22 Q. You can make that argument? You're supposed to be 23 doing an impartial investigation, aren't you?</p> <p>24 A. I was doing an investigation based on what I 25 was -- what I was determining.</p>
<p style="text-align: right;">134</p> <p>1 made baseless and untrue allocations to the Department of 2 Public Welfare against caseworker PW." Is that what you 3 wrote?</p> <p>4 A. That's what I was given to understand; that's what 5 I wrote.</p> <p>6 Q. Okay. And by allocations you meant allegations, 7 correct? Is that a typo?</p> <p>8 A. It certainly is. Sorry about that.</p> <p>9 Q. What investigation did you undertake to determine 10 whether or not those allegations were, in fact, baseless and 11 untrue?</p> <p>12 A. I was advised by -- I'm not sure whom. Maybe 13 Ms. Liebel. Maybe Attorney Allgeier. That a DPW 14 investigation had been made of those allegations, and they 15 were determined to be, you know, without foundation. And 16 the matter was unfounded.</p> <p>17 Q. So an allegation of child abuse that is determined 18 to be unfounded is, by definition, baseless and untrue?</p> <p>19 A. That was the gist of what I was led to believe.</p> <p>20 Q. I'm asking you in general. You participated in 21 more than one child abuse investigation leading to a 22 dependency proceeding, have you not?</p> <p>23 A. Sure.</p> <p>24 Q. Probably more than a dozen.</p> <p>25 A. Sure.</p>	<p style="text-align: right;">136</p> <p>1 Q. You weren't defending PW from an unjustified and 2 vicious attack by Ms. Conley?</p> <p>3 A. I hadn't made the decision. All I knew is what 4 the Department of Public Welfare had done.</p> <p>5 Q. Were you aware that it was the DPW investigator's 6 conclusion that just because it's unfounded doesn't mean it 7 didn't happen?</p> <p>8 A. No.</p> <p>9 Q. Nobody made you aware that she made that statement 10 to numerous people?</p> <p>11 A. No. I mean, I never talked to her.</p> <p>12 Q. Right. I was going to ask you that too.</p> <p>13 A. From what I -- from what I understood, she had 14 serious problems with the credibility of the information 15 that your client was conveying to her. And unfounded the 16 case, at least in part, for that reason. I mean, that's 17 what I was told, Mr. McNair.</p> <p>18 Q. Who told you that?</p> <p>19 A. I think Attorney Allgeier told me that. I want to 20 say maybe -- maybe Ms. Liebel told me that.</p> <p>21 Q. Okay. So because they told you that, you accepted 22 that as gospel. You didn't investigate the truth of that 23 allegation in any way, did you?</p> <p>24 A. No.</p> <p>25 Q. So your assertion that the baseless -- that the</p>

35 (Pages 137 to 140)

<p style="text-align: right;">137</p> <p>1 allegation was baseless and untrue is based exclusively on 2 what you were told by employees of OCY. 3 A. No. 4 Q. What else is it based on? 5 A. It's based on what this Shara Saveikis person 6 reported to them. 7 Q. I think it's based on what you were told she 8 reported, isn't it? You didn't talk to her. 9 MR. JOYAL: Objection. Argumentative. 10 A. You know, we can call it hearsay on hearsay. But, 11 I mean, that's the basis of my conclusion, Mr. McNair. 12 Q. And I said that -- okay. If she made the 13 statement to Ms. Liebel and others that just because it 14 didn't -- just because it's unfounded doesn't mean it didn't 15 occur, and they neglected to convey that to you, would that 16 statement have made any difference in your assertion that 17 this allegation was baseless and untrue? 18 A. If she was saying that not in a generic sense, but 19 specific as to this particular investigation, I might have 20 worded it a little bit differently. Maybe. But I didn't 21 hear that. 22 Q. Okay. Now, you state that you interviewed Kim 23 Peebles on August 4th, 2004. 24 A. Right. 25 Q. What prompted you to interview Kim Peebles?</p>	<p style="text-align: right;">139</p> <p>1 feel like she wanted to hear. 2 You know, that she had had kids taken away from 3 her, that her son had committed suicide. That, you know, 4 she had -- she had hurt this child or done something to this 5 VW child, whatever it was. And, you know, Ms. Peebles was 6 very uncomfortable getting that information because she had 7 no reason to be talking with Ms. Conley about it. I mean, 8 that was the gist of it. But she didn't solicit it; 9 Ms. Conley brought it to her. 10 Q. Why would Ms. Conley approach Ms. Peebles? 11 A. You have to ask Ms. Conley. I don't know the 12 answer to that. 13 Q. Did Ms. Peebles tell you what Ms. Conley said her 14 reason for approaching her was? 15 A. I don't believe that she said anything about why 16 it happened. I think it was just -- it was just she came up 17 to her and started conversing with her. 18 Q. Okay. 19 A. And it was -- you know, it was the same -- it was 20 during that same conversation that she made these comments 21 about Ms. Deveney, and this would have been right after the 22 July 28th hearing. 23 Q. Where Judge Connelly laced her out after the 24 hearing, threatening her with obstruction of justice 25 charges?</p>
<p style="text-align: right;">138</p> <p>1 A. Somebody, and I don't remember who, told me that 2 Kim had been upset by something that had been related to her 3 by your client centering on the PW situation. And, you 4 know, as I'm sitting here thinking about it, I want to say 5 too that maybe -- and this could well be. That Sue Deveney 6 came to me and said that Kim had come to her, or she had 7 heard that Kim had said that there was an allegation that 8 she was going to be charged with obstruction of justice. 9 That's the best I can recall about why I asked to talk to 10 Kim. 11 Q. Okay. And according to you, Ms. Conley approached 12 Kim Peebles. 13 A. This is according to Ms. Peebles. I sat down with 14 her in my office on August 4th. 15 Q. And she told you that she was approached by Abby 16 Conley, that she did not initiate a conversation with her. 17 A. Yes. That's the way I wrote it. That's the way 18 she would have told me. 19 Q. What were the circumstances under which Ms. Conley 20 approached her? 21 A. I don't specifically recall. I have some notes of 22 that conversation someplace that might answer that. I know 23 that -- I know that Ms. Peebles was uncomfortable with it. 24 She told me that she was. That Ms. Conley came to her and 25 talked -- said things about PW that, you know, she didn't</p>	<p style="text-align: right;">140</p> <p>1 A. That never happened in my presence, sir. 2 Q. Are you saying it never happened? 3 A. Not as far as I know. 4 Q. If I understand correctly, Ms. Peebles is the only 5 witness that you interviewed throughout the course of your 6 investigation. 7 A. You know, it kind of depends on how you want to 8 characterize the term "interviewed." You know, I talked 9 to -- I talked to a lot of people about this case, this 10 whole situation, ongoingly. And I don't know that I would 11 necessarily characterize the conversations I had with them 12 as interviews or not. 13 You know, I'm sure I talked to Ms. Deveney. I'm 14 sure I talked to Ms. Schetter about the July 28th hearing. 15 You know, in the sense of a formal sit-down kind of thing 16 where I actually sat down and took notes about what I -- 17 what I obtained from Ms. Peebles, she was the only one that 18 I recall doing that with. 19 Q. Did you call Ms. Cosby in the course of this 20 investigation? 21 A. No. 22 Q. Why not? 23 A. I didn't see the need to do that. The paper trail 24 that your client left in her e-mails made it pretty clear 25 what she was doing. I didn't need Ms Cosby to confirm or</p>

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<p style="text-align: right;">141</p> <p>1 deny that this had happened. It was pretty obvious what was 2 going on. 3 Q. Did you ever call Ms. Cosby for any other purpose 4 after she left the Agency? 5 A. Not directly. I had Ms. Schetter call her on 6 another occasion on a couple -- for a couple of times, I 7 believe, to talk to her about giving testimony in a totally 8 unrelated Orphans' Court matter that she had been previously 9 involved with. It turned out we didn't need her testimony 10 because the matter settled. 11 Q. Now, I think we talked earlier about the JS case 12 and that hearing. 13 A. This is the twins case, right? 14 Q. Yeah. 15 A. Okay. 16 Q. You were notified in advance of that hearing that 17 Mr. Villella had concerns over Ms. Conley's Court summary 18 being altered, weren't you? 19 A. No. I got a pretrial narrative from him in 20 advance. 21 Q. And it stated that he was calling Abby Conley 22 because -- relative to alteration of documents. 23 A. No, I don't believe it said that. If you have it, 24 we can look at it and we can discuss exactly what it said. 25 What I think it -- the gist of it was that Ms. Conley may</p>	<p style="text-align: right;">143</p> <p>1 Q. So you encouraged people to, if they had a 2 disagreement with the caseworker, the supervisor, to go to 3 the hearing and tell the Judge what they thought as opposed 4 to what the caseworker thought? 5 A. Well, you know, our practice was to attempt to get 6 folks to understand each other's point of view and come to a 7 consensus, if at all possible. So that the Agency position 8 that would be presented to the Court would be, you know, the 9 best one that could be presented for the benefit of the 10 family and the children. 11 And if everybody could resolve their differences, 12 if they had them, in advance of the preparation of those 13 documents and get that together in a way that would make the 14 hearing go smoothly and give a united front to the Court, 15 that was our preference. 16 You know, in situations, and there were some, 17 albeit they were rare, where we had significant 18 disagreements, people were encouraged to come to the hearing 19 and offer their other point of view. Or in the alternative, 20 if they wanted -- and this typically was between 21 caseworkers, supervisors and program directors. 22 They could offer a written addendum, if you will, 23 to the summary indicating what their perspective was and the 24 rationale for it. And then that would be submitted to the 25 Court and all the other parties in advance of the hearing.</p>
<p style="text-align: right;">142</p> <p>1 have had some disagreement with either the worker or the 2 supervisor about the direction the case was taking, or 3 something to that effect. 4 Q. Okay. 5 A. But I would rely on what the pretrial narrative 6 itself said. But nothing about alteration of documents, to 7 my recollection. 8 Q. So it was a complete surprise to you when that 9 issue popped up at the hearing. 10 A. What issue? 11 Q. That her Court summary had been altered. 12 A. Yeah, I didn't expect anything like that. You 13 know, I can tell you that it -- it's not uncommon in these 14 cases that we did for people who were involved with them to 15 not necessarily be all on the same page about everything 16 that's going on with the case or the direction that a case 17 is going in. That happens. 18 You know, reasonable minds sometimes can differ 19 about how families are to be serviced, you know, the 20 direction that cases go in. And, you know, we had a system 21 in place that basically allowed that kind of discussion and 22 dissension, if you want to characterize it that way, to be 23 brought before the Court, so that the Court would get the 24 benefit of folks' thinking before the Court made a 25 determination about which way things should go.</p>	<p style="text-align: right;">144</p> <p>1 Q. If a case aide or foster parent was listed on a 2 parent's or respondent's pretrial narrative as a witness, 3 was there a policy regarding the requirement that that 4 person be subpoenaed to the hearing? 5 A. Yeah. Our practice for our employees was if 6 somebody wanted one of our employees to appear and testify 7 at a hearing, that they were to subpoena the employee. 8 Q. Okay. 9 A. In a dependency case, in a custody case, in a 10 child abuse case, in a PFA hearing, whatever. Okay. Foster 11 parents, a little different animal, because they're not 12 employed by us. You know, if they were asked to come and 13 they wanted to come, they could come without a subpoena. 14 And if they wanted a subpoena, they were entitled to ask for 15 one. Does that answer your question? 16 Q. Okay. Was there any policy that an employee could 17 not attend a hearing at the request of a respondent unless 18 they actually had a subpoena that had properly been served 19 on them under the Court rules? 20 A. Yes. 21 Q. Has there ever been an instance where -- that 22 you're aware of, where someone has alleged that a subpoena 23 has been intercepted by the Agency and not delivered to the 24 individual? 25 A. Other than in this case? Not that I know of. And</p>

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<p style="text-align: right;">145</p> <p>1 I'm talking the twins case. And I know Mr. Villella made 2 that allegation, but that's not what happened. 3 Q. You were never asked to investigate anything 4 regarding Abby Conley prior to that July 28th, 2004 hearing, 5 were you? 6 A. No. 7 Q. Did you have any reason to investigate Ms. Conley 8 prior to that July 28th, '04 hearing? 9 A. No. 10 Q. And it wasn't until after that July 28th hearing 11 that Ms. Allgeier brings up concerns about Abby Conley to 12 you. 13 A. That's the first time that I heard anything at all 14 about there being a problem with her handling of that VW 15 situation, yeah. 16 Q. Which had occurred a month before. 17 A. Evidently. 18 Q. Okay. 19 A. Yeah, according -- 20 Q. And you see Ms. Allgeier every day. 21 A. No. No. I would go sometimes days and -- you 22 know, days at a time, you know, a week, ten days sometimes 23 at a time without seeing her or talking to her. 24 (Brief recess held.) 25 MR. McNAIR: That's all the questions I have at</p>	<p style="text-align: right;">147</p> <p>1 Q. Okay. Take a look at the index. Would that have 2 been -- and tell me if Sue Deveney's name is on that index 3 for the day of that hearing. 4 A. No. 5 Q. From anyone; is that correct? 6 A. I don't see it. 7 Q. Okay. So do you have a recollection, as you sit 8 here today, as to whether or not Mr. McNair's statement to 9 you that Judge Kelly in some manner informed Ms. Deveney 10 that she could have been obstructing justice happened during 11 that day? 12 MR. McNAIR: Objection. Argumentative. Lack of 13 foundation. Are you saying because she didn't 14 testify, she wasn't there? 15 MR. JOYAL: I'm asking him -- you made a statement 16 without foundation, and it said she had been told 17 by a Judge -- I don't remember the exact phrase -- 18 MR. McNAIR: I didn't make a statement. I asked 19 the question. 20 MR. JOYAL: No, you said. You made a statement 21 and we can go back and see it, which was that she 22 was told that day that she -- 23 MR. McNAIR: Objection. Foundation. 24 MR. JOYAL: -- was obstructing justice. 25 MR. McNAIR: Argumentative.</p>
<p style="text-align: right;">146</p> <p>1 this time. 2 (Recess held from 2:46 p.m. to 3:00 p.m.) 3 4 CROSS-EXAMINATION 5 BY MR. JOYAL: 6 7 Q. Mr. Cauley, I'm going to just ask you some 8 questions in follow-up to see if we can't clear up some of 9 the things that were -- might be ambiguous in terms of your 10 other testimony. I want to go to the July 28th hearing. 11 We have part of the transcript. And if I look at 12 this transcript, it looks like that there's a list and index 13 of witnesses. 14 A. Um-hum. 15 Q. With page numbers on here. 16 A. Um-hum. 17 Q. 225, 229. I presume that that would be all the 18 people that would have been included in a rather voluminous 19 transcript of that hearing. Would you agree? 20 A. Yeah. It says Page 2, index of witnesses, it goes 21 over onto Page 3. There's however many there are. 22 Q. Four more names. 23 A. Okay. 24 Q. Redirect, recross. 25 A. Right.</p>	<p style="text-align: right;">148</p> <p>1 BY MR. JOYAL: 2 Q. Does that refresh your recollection as to whether 3 or not Mr. McNair's version of events, that she was told by 4 the Judge on that day after the hearing -- 5 MR. McNAIR: Objection. Relevance. 6 Q. -- is true or not? 7 A. At no time when I was in the presence of Judge 8 Kelly that day or any other day did I ever hear her have a 9 communication, verbal or otherwise, with Sue Deveney to that 10 effect. 11 Q. Now, there was also a question asked of you 12 concerning whether or not your recollection as to whether 13 Mr. Villella may have had a copy of the document -- 14 A. Um-hum. 15 Q. -- prior to Abby Conley taking the witness stand. 16 Do you remember that? 17 A. Yeah. 18 Q. Let's go to page -- I believe your answer was 19 you're really not clear on that at this point. 20 A. Well, what my answer was and what my recollection 21 still is, is that she was on the witness stand, and he was 22 down in the pit, so to speak, by counsel table, and he 23 carried it up to her and showed it to her. 24 Q. I want you to take a look, if you would, on Page 25 71 of the transcript, starting at Line 17.</p>

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<p>1 A. Um-hum.</p> <p>2 Q. And if you would read it out loud, the questions</p> <p>3 and the answers, all the way down to the end of the page at</p> <p>4 Line 25 for the record, if you would.</p> <p>5 A. Starting at Line 17. Question: You produced a</p> <p>6 report summary that was attached to the Court summary that</p> <p>7 was provided in April; is that right? Answer: Yes.</p> <p>8 Question: Do you have a copy of that with you or do you</p> <p>9 want -- Answer: I have what I had on my hard drive at work.</p> <p>10 Question: Well, is that the same as what is attached to the</p> <p>11 Court summary?</p> <p>12 Q. We can stop there. Based on the transcript, is</p> <p>13 your recollection that there was a question asked of her</p> <p>14 whether she had a copy of it with her or did she want to</p> <p>15 have, and she interrupted and said that she indeed did have</p> <p>16 something with her?</p> <p>17 MR. McNAIR: Objection. The transcript speaks for</p> <p>18 itself.</p> <p>19 MR. JOYAL: I'm asking him his impression.</p> <p>20 MR. McNAIR: His impression is irrelevant.</p> <p>21 MR. JOYAL: I'm asking him his recollection.</p> <p>22 A. My recollection is that when she was sitting on</p> <p>23 the witness stand, she did not have in front of her at that</p> <p>24 point a copy of the document that she claimed had been</p> <p>25 changed, and that Mr. Villella delivered it to her. That's</p>	<p>1 Mr. Villella has informed me that he will</p> <p>2 testify, if called, that he received two phone</p> <p>3 calls prior to that hearing. One phone call was</p> <p>4 from his client saying that Abby Conley had called</p> <p>5 her -- or him to tell them --</p> <p>6 THE WITNESS: It would have been a her.</p> <p>7 MR. JOYAL: Or her. That such a copy of a report</p> <p>8 existed. And that the second was a phone</p> <p>9 conversation with Mr. Villella in which she</p> <p>10 confirmed that that report existed. Did you know</p> <p>11 that, sir?</p> <p>12 MR. McNAIR: Objection. Foundation.</p> <p>13 MR. JOYAL: I just made a representation. You can</p> <p>14 object all you want. That's what the testimony is</p> <p>15 going to be.</p> <p>16 BY MR. JOYAL:</p> <p>17 Q. Did you know that?</p> <p>18 A. I didn't know that until you told me that you had</p> <p>19 gotten that information from Mr. Villella, no.</p> <p>20 Q. And for the purposes of the hearing that day,</p> <p>21 you've already gone through what the procedure was, correct?</p> <p>22 A. Sure.</p> <p>23 Q. In terms of a disagreement. Did Abby Conley need</p> <p>24 to produce a copy of a report to show to the Judge, or could</p> <p>25 she have testified as to what her disagreement was with the</p>
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<p>1 the way it went down. That's what I remember.</p> <p>2 Q. But the question is from Villella, "Do you have a</p> <p>3 copy of that with you or do you want --" And her answer</p> <p>4 was, "I have what I had on my hard drive at work."</p> <p>5 A. I see that.</p> <p>6 Q. Okay. So it's possible, then, that you are</p> <p>7 correct that Villella had a copy, but that she may have</p> <p>8 already had a copy with her on the witness stand. Is that a</p> <p>9 fair statement?</p> <p>10 A. I don't know what she had with her on the witness</p> <p>11 stand. I don't have a particular recollection about that.</p> <p>12 I remember Mr. Villella walking up to her and giving her the</p> <p>13 document.</p> <p>14 Q. Let me ask another question concerning the work</p> <p>15 product concern that you have. Did you know or do you know</p> <p>16 that Abby Conley called Mr. Villella's client to inform him,</p> <p>17 he or she, of the fact that such a document existed?</p> <p>18 MR. McNAIR: Objection. Foundation.</p> <p>19 MR. JOYAL: All right. I'll lay the foundation.</p> <p>20 I'm going to make a representation --</p> <p>21 MR. McNAIR: I'm sure you will.</p> <p>22 MR. JOYAL: -- to all counsel here that I spoke</p> <p>23 with Mr. Villella on two occasions, the last of</p> <p>24 which was yesterday afternoon as we left this</p> <p>25 deposition.</p>	<p>1 contents of the Court summary?</p> <p>2 A. If she had been called by any party, she was free</p> <p>3 to tell the Judge whatever she was asked, as long as she was</p> <p>4 telling the truth.</p> <p>5 Q. And during the course of direct and</p> <p>6 cross-examination, Ms. Conley testified that, indeed, this</p> <p>7 was occurrences that had happened on more than one occasion</p> <p>8 in terms of reports being changed. And that she as a social</p> <p>9 services aide did not have the training to be able to give</p> <p>10 an opinion as to what should happen to children; is that</p> <p>11 correct?</p> <p>12 MR. McNAIR: Objection. Argumentative. This</p> <p>13 whole line of questioning is argumentative. If</p> <p>14 you'll give me a standing objection.</p> <p>15 MR. JOYAL: That's fine. Hold onto it.</p> <p>16 MR. McNAIR: You mean you're giving me a standing</p> <p>17 objection to the argumentative nature of this line</p> <p>18 of questioning.</p> <p>19 MR. JOYAL: Well, I think the objection is not</p> <p>20 founded properly.</p> <p>21 MR. McNAIR: I understand that.</p> <p>22 MR. JOYAL: It's not argumentative. But whatever</p> <p>23 one you want to use.</p> <p>24 BY MR. JOYAL:</p> <p>25 Q. Let me try Page 81. See if this refreshes your</p>

39 (Pages 153 to 156)

<p style="text-align: right;">153</p> <p>1 recollection in terms of the question. Just read from Line 2 5 down to Line 13. 3 A. This is a question to Mrs. Conley. 4 Q. Yeah, you don't -- just read it to yourself. 5 A. Not out loud? 6 Q. Well -- 7 A. That's fine. Whatever -- 8 Q. Just read it to yourself. 9 A. I just want to make sure. (Witness complies.) 10 Okay, I see that. 11 Q. Did Ms. Conley under questioning from someone 12 other than yourself say that she wasn't qualified to have an 13 opinion or to necessarily state those opinions? 14 MR. McNAIR: Objection. The transcript speaks for 15 itself. 16 MR. JOYAL: Well, then, we'll read it. 17 A. What she said was, "Well, just that I'm reminded 18 of my position at OCY that I'm not qualified to have an 19 opinion or to necessarily state those opinions. It's my job 20 to facilitate," is what she said. 21 Q. Okay. That was in the context of written reports; 22 is that right? 23 A. Yes. 24 Q. I want you to read for me, if you would, the 25 transcript at Page 89, starting at Line 8. And I will</p>	<p style="text-align: right;">155</p> <p>1 retype. She'll take a red pen and correct." 2 Q. Okay. So that was Ms. Conley's testimony that -- 3 of the procedure that took place. 4 A. That was -- yeah, of her -- of the way her 5 supervisor supervised her work product, which would be 6 consistent with Agency practice. 7 Q. Going to Page 98. This is questioning by 8 Mr. Lucht again of Abby Conley. Start at 16, read 16 9 through 20, question and answer, if you would. 10 A. "Question: I will ask that question. Has anybody 11 told you to change your summaries or change your outlook? 12 Answer: That I need to stick with like observations, not to 13 have words that are broad. I really concentrated on that on 14 my July 15th Court summary." 15 Q. Okay. Again, Ms. Conley testified as to what 16 the -- what she was told to do? 17 A. That's my -- correct. That's my recollection. 18 Q. Not to use broad words. 19 A. Yes. 20 Q. Take a look at Page 99. Start at the top line, 21 Line 1, and read down to Line 5, again, questions of 22 Ms. Conley. 23 A. "Question: Your Court summary, were you 24 supportive of the parents or not? Answer: I just basically 25 described how the visits go. I'm not qualified to recommend</p>
<p style="text-align: right;">154</p> <p>1 represent that according to the index -- strike that. That 2 these are -- starting on Page 79, these are Mr. Villella's 3 questions. Start at Page 8. 4 A. Line 8? 5 Q. Start at the question. Line 8. 6 A. To myself or aloud? 7 Q. Read it aloud slowly for the record. This is 8 Mr. Villella's questioning of Ms. Conley. 9 A. "Question: If I give you a minute and the Court 10 allows us to, can you review this. Will you know whether 11 that's your report or not? Answer: This is the one that I 12 submitted on the 16th. Question: Does it appear to have 13 any edits like the ones involving Ms. S did?" 14 Parenthetically, Ms. S would be Mr. Villella's client, the 15 mother of the children. 16 Q. Okay. And the answer was? 17 A. "Answer: See, the problem is that I submitted 18 this on the 16th. This hard copy was corrected by 19 Ms. Deveney, was handed back to me. I went back into my 20 program and made the adjustments that she requested and 21 resubmitted the corrected version hard copy for the 19th. 22 This is the 16th. This is the first one without 23 corrections. What the process is, is I write the Court 24 summary, I submit it to Ms. Deveney by e-mail. She prints 25 it out, makes the corrections, submits it back to me, and I</p>	<p style="text-align: right;">156</p> <p>1 or place judgment or recommendations or anything. That's 2 just not my capacity." 3 Q. Okay. Now, during that period of time, would that 4 have indicated to you that Ms. Conley agreed and admitted 5 under questioning from other counsel that she didn't have 6 the qualifications to make opinion judgments? 7 MR. McNAIR: Objection. 8 Q. Did that? 9 A. That's what her answer seemed to reflect. 10 MR. McNAIR: And, again, the transcript speaks for 11 itself. 12 A. That's how I took -- 13 MR. McNAIR: And I don't think this witness's 14 interpretation of it has any relevance whatsoever. 15 MR. JOYAL: Your objection is noted. 16 MR. McNAIR: Okay. 17 BY MR. JOYAL: 18 Q. I want to go through some of these e-mails, and 19 we'll just try to get some time frames here. And I'm going 20 to do that in preparation for asking you -- you had been 21 asked a question by Mr. McNair about why Ed Palattella was 22 there. So I just want to let you know that these questions 23 and these time frames are going to go into this, and we'll 24 ask you a question afterwards. 25 You know that Abby Conley was involved either as a</p>

40 (Pages 157 to 160)

<p style="text-align: right;">157</p> <p>1 reporter or as a witness in the PW matter; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And yesterday during the course of depositions of</p> <p>4 Ms. Liebel and Ms. Saveikis there were certain documents</p> <p>5 placed into evidence, one of which was, and I'll show you,</p> <p>6 which had been marked as Liebel 3. Okay. And I</p> <p>7 particularly want to have you read the first two paragraphs</p> <p>8 just for the purpose of the dates.</p> <p>9 A. To myself?</p> <p>10 Q. Yeah.</p> <p>11 A. Okay. (Witness complies.) All right. I've done</p> <p>12 that.</p> <p>13 Q. All right. Now, it appears from that letter that</p> <p>14 the operative dates are June 9th, which was supposedly the</p> <p>15 date of the incident.</p> <p>16 A. Correct.</p> <p>17 Q. June 21, when the incident was reported, correct?</p> <p>18 A. By Ms. Conley, according to this letter.</p> <p>19 Q. Yeah.</p> <p>20 A. All right.</p> <p>21 Q. And June 29, which was the date that Ms. Saveikis</p> <p>22 came in and conducted interviews, correct?</p> <p>23 A. According to this, that's the way it reads, yes,</p> <p>24 sir.</p> <p>25 Q. Okay. Now, besides Agency confidentiality</p>	<p style="text-align: right;">159</p> <p>1 Q. And it doesn't give any extensions of e-mail</p> <p>2 addresses; is that correct?</p> <p>3 A. No, sir.</p> <p>4 Q. Okay. So --</p> <p>5 A. I mean, that is correct.</p> <p>6 Q. Right. So what I presume -- am I correct in</p> <p>7 presuming that that means it's an internal e-mail within</p> <p>8 OCY?</p> <p>9 MR. McNAIR: Objection. Foundation.</p> <p>10 A. Well, I -- yeah, I would have to say so. Number</p> <p>11 one, because that's the way the e-mail system worked, but</p> <p>12 this person was an employee or a student or something at</p> <p>13 that time.</p> <p>14 Q. And one would also -- Matt Granger had pulled this</p> <p>15 off the hard drive because it has his name on it as well,</p> <p>16 correct? Was that the way that those documents that</p> <p>17 Mr. Granger had taken off came back, with his name on them</p> <p>18 as well?</p> <p>19 A. Yeah, because he was the source.</p> <p>20 Q. At 3:24 or 3:14 p.m. on that date there is an</p> <p>21 e-mail that says from Abby Conley to Mrs. Cates that says,</p> <p>22 "You and I need to talk. Call me at home," period. Do you</p> <p>23 see that?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And then it says "ABC." Right?</p>
<p style="text-align: right;">158</p> <p>1 policies, there are also statutes, state statutes, under the</p> <p>2 Child Protective Services Law which deal with</p> <p>3 confidentiality as well; is that correct?</p> <p>4 A. True.</p> <p>5 Q. And some of them deal with reports of child abuse</p> <p>6 investigations; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And without citing chapter and verse, unless you</p> <p>9 can, they indicate that those -- all reports, both of the</p> <p>10 perpetrator, the victim, the reporter, and facts during</p> <p>11 course of an investigation are to remain confidential; is</p> <p>12 that correct?</p> <p>13 A. Absolutely.</p> <p>14 Q. I'm going to show you an e-mail that was attached</p> <p>15 as part of the exhibit that Mr. McNair gave to you. It's</p> <p>16 one, two, three, four, five pages from the back. Are you</p> <p>17 with me here? It's dated June 24. It says Matt Granger on</p> <p>18 the top of it.</p> <p>19 A. Okay.</p> <p>20 Q. And then there are two e-mails.</p> <p>21 A. Yes.</p> <p>22 Q. One is from Abby Conley to Nzinga Cates or</p> <p>23 N-Z-I-N-G-A Cates. Do you know how to pronounce her first</p> <p>24 name?</p> <p>25 A. No, sir.</p>	<p style="text-align: right;">160</p> <p>1 A. It does.</p> <p>2 Q. Abby B. Conley. Below that is the original</p> <p>3 message. So this is a reply to an original message which</p> <p>4 came at 1:26 p.m. to Abby Conley from Ms. Cates. Do you see</p> <p>5 that?</p> <p>6 A. I see that.</p> <p>7 Q. Do you want to read for the record what that</p> <p>8 e-mail says on June 24th.</p> <p>9 A. "Just wanted to let you know that the meeting went</p> <p>10 well. They did ask me about the incident with P and the</p> <p>11 child, parenthesis, if I knew anything, close parenthesis.</p> <p>12 I played completely dumb. She did smooth things over, but I</p> <p>13 didn't let her get away from the point. I made it clear</p> <p>14 that I was going to be respected. She said that she talked</p> <p>15 to P, and if I had another problem, that I should make sure</p> <p>16 I tell her to her face and let her know that what she said</p> <p>17 was inappropriate. She most likely did talk to her because</p> <p>18 P has been overwhelmingly nice to me lately. She did tell</p> <p>19 me that she didn't really want me to go out on visits with</p> <p>20 you because she wanted me to see, quote, 'the social</p> <p>21 worker's point of view and the paperwork that gets done,'</p> <p>22 close quote. You better not tell her I told you that. I'll</p> <p>23 call you soon. Zin."</p> <p>24 Q. Now, this would have been based on the dates that</p> <p>25 we talked about in terms of the PW incident report three</p>

41 (Pages 161 to 164)

<p style="text-align: right;">161</p> <p>1 days after it had been reported, correct?</p> <p>2 A. It fits into that time line that way, yes, sir.</p> <p>3 Q. And there is a reference by this student/intern or</p> <p>4 whatever that, "A meeting went well and they did ask me</p> <p>5 about the incident with P and the child, parentheses, if I</p> <p>6 knew anything. I played completely dumb." Correct?</p> <p>7 A. It says that.</p> <p>8 Q. If, indeed, Ms. Cates knew anything about that</p> <p>9 incident, and it had been reported to her by Ms. Conley,</p> <p>10 would that have been a violation above Agency policy and</p> <p>11 CPLS law?</p> <p>12 MR. McNAIR: Objection. Argumentative. Calls for</p> <p>13 speculation.</p> <p>14 Q. You can answer.</p> <p>15 A. Most definitely a violation of both, in my</p> <p>16 opinion.</p> <p>17 Q. Okay. And let's go -- I'm going to try to find it</p> <p>18 here. There's -- okay. I'm going to go -- and just to show</p> <p>19 it to you, because this is also within there. Just to make</p> <p>20 things easy.</p> <p>21 A. Um-hum.</p> <p>22 Q. This is an e-mail. And these are during the</p> <p>23 string of e-mails from the 4th of June, 2004.</p> <p>24 A. Um-hum.</p> <p>25 Q. Okay. Deanna Cosby -- I'm on Page 3. It starts</p>	<p style="text-align: right;">163</p> <p>1 that exhibit, which is from June 4th, another one of the</p> <p>2 string of e-mails on June 4th. It says Page 1 at the</p> <p>3 bottom. You were discussing that with Mr. McNair. I want</p> <p>4 to talk about the one that is in the middle that has the</p> <p>5 redactions.</p> <p>6 A. Sure, I see that. I have it.</p> <p>7 Q. Okay. Now, Mr. McNair asked you whether or not, I</p> <p>8 believe, you had any knowledge as to whether Ms. W knew</p> <p>9 about the order. Do you remember that?</p> <p>10 A. That was this morning. It was a while ago, but I</p> <p>11 do.</p> <p>12 Q. Well, I want you to take a look at this e-mail,</p> <p>13 and I want you to read Abby's e-mail to Ms. Cosby, which was</p> <p>14 6/4/2004 at 2:29:53.</p> <p>15 MR. McNAIR: Just for the record, I object to your</p> <p>16 mischaracterization of my question. I asked him</p> <p>17 whether Ms. Conley had seen an order.</p> <p>18 MR. JOYAL: No, that wasn't what you asked him,</p> <p>19 but we can go back in the transcript.</p> <p>20 MR. McNAIR: Well, the record will bear that out.</p> <p>21 MR. JOYAL: Absolutely.</p> <p>22 BY MR. JOYAL:</p> <p>23 Q. Read the e-mail without the redactions in it --</p> <p>24 with the redactions in it.</p> <p>25 A. "I just spoke to" -- I can fill this in, if it's</p>
<p style="text-align: right;">162</p> <p>1 at Page 3 and the bottom line says, "Did you call my cell</p> <p>2 last night?" And it goes up. And the one above it says,</p> <p>3 6/4 of 2004, 11:28:57. "Yes, I did. I really wanted to</p> <p>4 tell you something. I'll talk to you this weekend. I don't</p> <p>5 trust this e-mail system monitor."</p> <p>6 And then next one from Deanna Cosby at 12:09 said,</p> <p>7 "Can someone say paranoid." The one above that is a reply,</p> <p>8 saying, "Paranoid," with an exclamation mark. That's from</p> <p>9 Mrs. Conley, correct?</p> <p>10 A. Right. That's that back-and-forth conversation.</p> <p>11 Q. Right. And then Ms. Cosby says, "With</p> <p>12 justification." Correct?</p> <p>13 A. Correct.</p> <p>14 Q. And then the next one above that says, "I have</p> <p>15 not -- I've learned not to trust. Zin, the new girl, is</p> <p>16 awesome. She is Christian, normal, and believes in</p> <p>17 empowerment. God sent her to this unit. I can tell that</p> <p>18 she is going to be one of us," exclamation point.</p> <p>19 A. It says that.</p> <p>20 Q. This Zin being the same Zin that it appears that</p> <p>21 Ms. Conley told about the PW incident?</p> <p>22 A. 20 days later.</p> <p>23 Q. Yeah.</p> <p>24 A. Yes.</p> <p>25 Q. Let's go to another e-mail that was attached to</p>	<p style="text-align: right;">164</p> <p>1 permissible.</p> <p>2 Q. Well, put V in.</p> <p>3 A. -- "VW last night. She was not in labor. Her</p> <p>4 attorney told VW that she has nothing to worry about when it</p> <p>5 comes to the unborn child. She told VW that we,</p> <p>6 parenthesis, OCY, close parenthesis, cannot detain. VW is</p> <p>7 taking her attorney's advice. She is due any day. P has</p> <p>8 detention letters at all the local hospitals. VW does not</p> <p>9 see this coming."</p> <p>10 Q. Okay. To you, as a reasonable person, does that</p> <p>11 e-mail indicate to you that -- number one, that VW's</p> <p>12 attorney was incorrect if, indeed, she did tell VW that OCY</p> <p>13 couldn't detain?</p> <p>14 A. Clearly. I mean, because we had the authority to</p> <p>15 do that --</p> <p>16 Q. And did so.</p> <p>17 A. -- and, in fact, had done so.</p> <p>18 Q. Okay.</p> <p>19 A. That order -- in fact, that order was issued, I</p> <p>20 want to say, a month before this date.</p> <p>21 Q. And it says further that, "VW is taking her</p> <p>22 attorney's advice." We don't know what that advice is, do</p> <p>23 we?</p> <p>24 A. We don't. Ms. Conley evidently did, but we can't</p> <p>25 tell from this.</p>

42 (Pages 165 to 168)

<p style="text-align: right;">165</p> <p>1 Q. And one would presume that an officer of the Court</p> <p>2 that dealt with these cases all the time would -- if a</p> <p>3 client suggested leaving the jurisdiction with their unborn</p> <p>4 child, would have advised that client not to do so. Would</p> <p>5 you presume that?</p> <p>6 A. I think that's a reasonable presumption.</p> <p>7 Q. So making that presumption that you call</p> <p>8 reasonable, when you go to the next couple sentences, what</p> <p>9 would that indicate to you that Ms. Conley believed?</p> <p>10 A. That Ms. W was going to stay. That she was going</p> <p>11 to have her baby. And that she had no knowledge that the</p> <p>12 Agency had undertaken to detain the child and would do so at</p> <p>13 the time of birth.</p> <p>14 Q. And if Ms. Cosby who said she will, and then above</p> <p>15 that said, "God bless you, Deanna," believed that, do you</p> <p>16 think that maybe what would then happen is if Ms. Cosby had</p> <p>17 made a comment to her saying that her attorney was</p> <p>18 incorrect, that it would be possible that Ms. W would have</p> <p>19 made a different choice and maybe left the jurisdiction?</p> <p>20 MR. McNAIR: Objection. Are you done? Objection.</p> <p>21 Argumentative. Lack of foundation. Calls for</p> <p>22 speculation.</p> <p>23 MR. JOYAL: Well, it will be tied up in the next</p> <p>24 question.</p> <p>25 MR. McNAIR: And relevance.</p>	<p style="text-align: right;">167</p> <p>1 A. Not only that her lawyer was wrong, but that, in</p> <p>2 fact, it is coming. She says to her, "She does not see this</p> <p>3 coming." And the response is, "She's going to see this</p> <p>4 coming." "She will see this coming."</p> <p>5 MR. McNAIR: Objection. That's not what it says.</p> <p>6 Q. What does it say?</p> <p>7 A. She will.</p> <p>8 Q. And sometime subsequent to the separation of</p> <p>9 Ms. Conley from OCY, did you -- or were you able to see some</p> <p>10 letters that had been written around this time frame</p> <p>11 allegedly by Ms. W to Mr. B, who was the father of the</p> <p>12 child?</p> <p>13 MR. McNAIR: Objection. Relevance.</p> <p>14 A. I most definitely did.</p> <p>15 Q. And in some of those letters around this time</p> <p>16 frame did you see that there was contemplation by Ms. W,</p> <p>17 after her conversation with Ms. Cosby, that she might leave</p> <p>18 to go to either Florida or Canada to have her child?</p> <p>19 A. Yes.</p> <p>20 Q. And was there also reference to the fact that she</p> <p>21 chose not to do that because her lawyer told her that that</p> <p>22 would not be wise, if you can recall?</p> <p>23 A. Yeah.</p> <p>24 MR. McNAIR: Objection. Foundation.</p> <p>25 A. I believe -- I believe so. My recollection is</p>
<p style="text-align: right;">166</p> <p>1 MR. JOYAL: It will be tied up in the next</p> <p>2 question.</p> <p>3 BY MR. JOYAL:</p> <p>4 Q. Do you think she may have thought about leaving</p> <p>5 the jurisdiction?</p> <p>6 MR. McNAIR: Objection. Relevance. Speculation.</p> <p>7 A. Well, if she had been advised that her attorney's</p> <p>8 advice was incorrect and that, in fact, there were detention</p> <p>9 letters, which I interpret to mean an order at all of the</p> <p>10 local hospitals, and she was made aware of that before she</p> <p>11 went there to deliver her child, sure.</p> <p>12 Q. And that would probably or most likely be contrary</p> <p>13 to Mr. McNair's question to you that if you were in this</p> <p>14 business long enough, you would know that there would be</p> <p>15 detention letters everywhere?</p> <p>16 MR. McNAIR: Objection. Argumentative.</p> <p>17 Q. Correct? Would you agree?</p> <p>18 MR. McNAIR: Relevance.</p> <p>19 A. I think that's fair.</p> <p>20 Q. Okay. So apparently Ms. Conley to Ms. Cosby was</p> <p>21 asking Ms. Cosby to tell Ms. W that her lawyer was wrong.</p> <p>22 MR. McNAIR: Objection. Argumentative.</p> <p>23 Speculation.</p> <p>24 Q. Do you agree?</p> <p>25 MR. McNAIR: Foundation.</p>	<p style="text-align: right;">168</p> <p>1 that the letter was written by VW to Mr. B, the father of</p> <p>2 the child the day after this e-mail, that is, on June 5th of</p> <p>3 2004, indicating to Mr. B that, in fact, Deanna Cosby had</p> <p>4 communicated to her, VW, precisely what Ms. Conley had asked</p> <p>5 her to do.</p> <p>6 Q. Had you been made aware of any letters subsequent</p> <p>7 to the termination of the separation that Mr. B had written</p> <p>8 concerning his knowledge of PW's alleged mistreatment of</p> <p>9 VW's daughter?</p> <p>10 A. Vaguely. I remember -- I remember some of that.</p> <p>11 That was more of what Attorney Allgeier looked at than what</p> <p>12 I did.</p> <p>13 Q. Okay.</p> <p>14 A. But I believe that that's correct.</p> <p>15 Q. Mr. McNair, during the course of his questioning</p> <p>16 of you concerning the prognostic detention order and these</p> <p>17 e-mails, asked you about whether or not Ms. Jones, who I</p> <p>18 believe is in Mr. Angelone's office, her number was listed</p> <p>19 in the phone book.</p> <p>20 A. Yeah, I remember that.</p> <p>21 Q. And I want to show you -- take a look at the</p> <p>22 e-mail that is above that. This is from Ms. Conley, May</p> <p>23 27th, 2004, to Deanna Cosby.</p> <p>24 A. Um-hum.</p> <p>25 Q. Would you read that for the record.</p>

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<p style="text-align: right;">169</p> <p>1 A. That e-mail reads, "Deanna. VW's attorney wants 2 you to call her. The number is (814) 868-8541. The 3 attorney's name is Amy Jones. VW asked me to ask if you 4 would do this." And there is a scripted signature, Abby B. 5 Conley. 6 Q. Okay. And this was -- again, appears to have come 7 from her work computer. 8 A. It does. 9 Q. Would that seem to indicate to you that at least 10 Ms. Cosby had no knowledge as to who the attorney was? 11 MR. McNAIR: Objection. Argumentative. 12 A. Well, it -- it appears that the attorney's name is 13 being furnished her. I think you could reasonably conclude 14 that. 15 Q. So without Ms. Cosby having knowledge, apparently, 16 of who the attorney was, it would be somewhat difficult, 17 would you not agree, for her to be able to look her name up 18 in the phone book? 19 MR. McNAIR: Objection. Argumentative. 20 Q. Is that right? 21 MR. McNAIR: Are you out just to waste our time, 22 or do you have a point here? 23 Q. Is that right? 24 A. I think it would be harder if you didn't know who 25 you were looking for.</p>	<p style="text-align: right;">171</p> <p>1 MR. JOYAL: Excuse me? Did you stay stupidity? 2 MR. McNAIR: Yeah. Waste of time. 3 MR. JOYAL: Okay. Mr. McNair -- 4 MR. McNAIR: I'll withdraw stupidity, and I'll 5 just stick with waste of time. 6 MR. JOYAL: Whatever you want to do, Mr. McNair, 7 that's fine. 8 A. I wouldn't have any idea what might prompt 9 Mr. McNair to ask the given questions. 10 Q. Well, let me ask the question this way. Presuming 11 either way that it happened. Let's presume that if 12 Ms. Conley were to testify that she was approached by 13 Mrs. Peebles and asked about PW's case, should she -- or 14 would it have been a violation of either CPL -- CPSL 15 statutes or Agency policy to have even responded? 16 MR. McNAIR: Objection. Calls for legal 17 conclusion. 18 MR. JOYAL: He's a lawyer. 19 MR. McNAIR: And foundation. That's certainly not 20 what the CPSL law says. 21 MR. JOYAL: Well, then, if it doesn't, sir, then 22 you can bring it out and show it to me. Okay. 23 And until you do that, I'll take my interpretation 24 and his over yours. 25 BY MR. JOYAL:</p>
<p style="text-align: right;">170</p> <p>1 Q. Your conversation that you had during the course 2 of your interviewing individuals with Ms. Peebles, Mr. 3 McNair asked you whether or not -- who initiated the 4 conversation between Ms. Conley and Ms. Peebles. Do you 5 remember that? 6 A. Sure. 7 Q. And it was your recollection that it was 8 Ms. Conley that approached Ms. Peebles, not the other way 9 around. 10 A. I believe -- 11 MR. McNAIR: Objection to his recollection as what 12 he was told. He recalls that's what he was told, 13 but he certainly didn't witness it. 14 A. That's correct. 15 Q. All right. Did you have any doubt during the 16 course of the questioning that -- did you believe or was it 17 your impression that maybe your recollection was incorrect 18 and that, indeed, Ms. Peebles had approached Ms. Conley? 19 A. No, I have no reason to believe it happened that 20 way. 21 Q. Okay. But did you think when Mr. McNair asked the 22 question the way he did that maybe that was what he was 23 alleging took place? 24 MR. McNAIR: Objection. Relevance. Stupidity. 25 A. I would never --</p>	<p style="text-align: right;">172</p> <p>1 Q. Would that have been a violation? 2 A. Ms. Peebles was the supervisor of the clerical 3 pool. She would have had no reason to have any information 4 pertaining to this. There would have been no appropriate 5 rationale to discuss this case with her in any way, shape or 6 form. So whether she approached Ms. Conley or whether 7 Ms. Conley approached her, if Ms. Conley shared CPSL 8 information with her, which my understanding is this was, 9 that would have been inappropriate. It would have been a 10 breach of Agency confidentiality policy, and it would have 11 been at least an arguable violation of the Child Protective 12 Services Law. 13 Q. So is it your -- do I understand your answer to 14 say that if she had been approached by Ms. Peebles, that she 15 should have said, I don't know anything about this or I 16 can't talk about this and walked away? 17 A. I think the appropriate answer would have been, 18 I'm not able to discuss this with you. 19 Q. And Ms. Peebles was, in your opinion, credible 20 when she suggested that there was a discussion of this? 21 MR. McNAIR: Objection. Relevance. 22 MR. JOYAL: You tried to attack his investigation 23 and what he put in here. 24 MR. McNAIR: I -- 25 MR. JOYAL: Or you can answer the question. You</p>

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<p style="text-align: right;">173</p> <p>1 made your objection.</p> <p>2 MR. McNAIR: I did attack his investigation.</p> <p>3 A. I thought she was -- she was -- she was forthright</p> <p>4 about what I wanted to ask her. But she was -- she was</p> <p>5 hesitant, she was nervous. She -- you know, she didn't</p> <p>6 really want to kind of be involved in maybe getting</p> <p>7 Ms. Conley in trouble. I think that's the way she was</p> <p>8 conveying it. But she was -- you know, she answered my</p> <p>9 questions and, you know, was uncomfortable having to do it,</p> <p>10 I think.</p> <p>11 Q. All right. And then the second issue was the</p> <p>12 issue of the newspaper article and the accusation from</p> <p>13 Ms. Conley that Ms. Deveney was going to be charged with</p> <p>14 obstruction of justice and fired, and she would face jail</p> <p>15 time.</p> <p>16 A. That's what Ms. Peebles told me she had been told</p> <p>17 by Ms. Conley.</p> <p>18 Q. You wrote in Item 5 that you believe that this was</p> <p>19 conduct violative of Sections A9, B6 and 8, C7 and 11. And</p> <p>20 I presume that's with the County policy, County Employment</p> <p>21 Policy?</p> <p>22 A. Yeah, it's the --</p> <p>23 Q. No. 5.</p> <p>24 A. Right. It would be the Employee Work and Conduct</p> <p>25 Responsibilities from the -- this is from the County.</p>	<p style="text-align: right;">175</p> <p>1 Q. Your interpretation, sir. Termination offense?</p> <p>2 A. Well, that's where it falls under the --</p> <p>3 Q. C7.</p> <p>4 A. -- under Section C, yes.</p> <p>5 Q. So if you tell someone that a fellow employee is</p> <p>6 going to be charged with obstruction of justice, fired and</p> <p>7 put in jail, is there any doubt in your mind, as you were</p> <p>8 writing this and wrote it up, that that would have been a</p> <p>9 violation of C7?</p> <p>10 A. None whatsoever.</p> <p>11 Q. Now, I know that you weren't involved in the</p> <p>12 termination decisions or the decisions surrounding that.</p> <p>13 But would you say that just that piece could lead a</p> <p>14 reasonable person within the County to decide that</p> <p>15 Ms. Conley was subject to termination without any other</p> <p>16 evidence contained in the e-mail?</p> <p>17 MR. McNAIR: Objection. As this witness</p> <p>18 testified, his opinion is not relevant, was not a</p> <p>19 consideration of the County --</p> <p>20 MR. JOYAL: That's fine.</p> <p>21 MR. McNAIR: -- in making its decision. So you're</p> <p>22 just wasting our time.</p> <p>23 MR. JOYAL: You objected.</p> <p>24 BY MR. JOYAL:</p> <p>25 Q. Do you believe that?</p>
<p style="text-align: right;">174</p> <p>1 Employee's handbook, I believe.</p> <p>2 Q. And those were attached, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And A9 is being disruptive or discourteous with</p> <p>5 other employees, correct?</p> <p>6 A. Correct.</p> <p>7 Q. B6 is relating false or derogatory information</p> <p>8 which may injure the name or representation of another</p> <p>9 employee. That would be a five-day suspension, up to,</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 Q. And C -- B8 is misconduct, conduct which is</p> <p>13 inappropriate or unreasonable in light of circumstances</p> <p>14 involved. And it goes on to talk about Section B,</p> <p>15 suspensions. But we get to C, which is subject of</p> <p>16 termination. And you said C7, conduct during work or</p> <p>17 non-work hours which would cause a reasonable person to have</p> <p>18 an unsavory opinion about County employees or County</p> <p>19 operations. And 11, misconduct or conduct which is</p> <p>20 inappropriate in light of circumstances involved and is</p> <p>21 comparable to the failures referenced in this Section C.</p> <p>22 Now that's a termination offense, if proven,</p> <p>23 correct?</p> <p>24 MR. McNAIR: Objection. The policy speaks for</p> <p>25 itself.</p>	<p style="text-align: right;">176</p> <p>1 A. I would have had no problem, in my professional</p> <p>2 capacity as the Solicitor for the Office of Children and</p> <p>3 Youth, suggesting to the County that Ms. Conley be</p> <p>4 terminated for that reason alone. You know, to falsely</p> <p>5 accuse someone of criminal conduct, you know, is not only a</p> <p>6 violation of these policies and procedures. But if my law</p> <p>7 school training, which was a long time ago, is of any value</p> <p>8 to me, it's, per se, slanderous.</p> <p>9 Q. And this would have had -- this had nothing to do</p> <p>10 with the PW case and the e-mails to Deanna Cosby. This was</p> <p>11 direct information that you had received directly from</p> <p>12 another worker.</p> <p>13 A. A supervisor. Yes, correct.</p> <p>14 Q. Another person employed at OCY.</p> <p>15 A. Correct.</p> <p>16 Q. Saying that Abby Conley told her these things.</p> <p>17 A. Correct.</p> <p>18 Q. Were you made aware that at some point in time</p> <p>19 during the course of the PW investigation and its immediate</p> <p>20 aftermath, that there had been an e-mail sent to the</p> <p>21 administration at OCY from the union steward expressing</p> <p>22 concerns about Abby Conley's conduct and discussions that</p> <p>23 she may have been having about PW?</p> <p>24 MR. McNAIR: Objection. Foundation. I'm not</p> <p>25 aware of any such e-mail.</p>

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<p style="text-align: right;">177</p> <p>1 MR. JOYAL: You're not aware of it?</p> <p>2 MR. McNAIR: No.</p> <p>3 MR. JOYAL: You ought to look through all this</p> <p>4 stuff --</p> <p>5 MR. McNAIR: Do you want to produce it?</p> <p>6 MR. JOYAL: We did produce it. You may --</p> <p>7 MR. McNAIR: Produce it. You want to show it to</p> <p>8 the witness --</p> <p>9 MR. JOYAL: Yeah.</p> <p>10 MR. McNAIR: -- because there's no e-mail that</p> <p>11 says that.</p> <p>12 MR. JOYAL: You don't think so. Okay. I don't</p> <p>13 have to show it to the witness. I asked --</p> <p>14 MR. McNAIR: Okay. You're calling for</p> <p>15 speculation, then.</p> <p>16 MR. JOYAL: That's fine. Object away, Tim.</p> <p>17 BY MR. JOYAL:</p> <p>18 Q. Were you aware of that?</p> <p>19 A. I'm aware that a lady named Heather McConnell,</p> <p>20 which I think was her name at that time, she's since been</p> <p>21 married. She was the union steward. At some point brought</p> <p>22 to the concern of the administration of the Office of</p> <p>23 Children and Youth the fact that Ms. Conley was making</p> <p>24 disparaging remarks about Ms. PW to other employees.</p> <p>25 I didn't learn that until, I'm sure, probably</p>	<p style="text-align: right;">179</p> <p>1 was.</p> <p>2 A. Well, the cases that caseworkers and people in the</p> <p>3 Agency would handle -- this is kind of a preference, just</p> <p>4 bear with me -- present some very, very difficult and trying</p> <p>5 circumstances in terms of attempting to provide services to</p> <p>6 families that are hurting and dysfunctional for one reason</p> <p>7 or another. Trying to keep children safe in environments</p> <p>8 and hopefully with their families if they can be, and, if</p> <p>9 not, in other environments, and then hopefully reunited</p> <p>10 safely with their families.</p> <p>11 The cases are complex. The issues that have to be</p> <p>12 confronted sometimes are very complicated and difficult.</p> <p>13 And people's points of view about how to address those in a</p> <p>14 way that best serves the needs of the family and the</p> <p>15 children sometimes don't come together.</p> <p>16 And the people that work with these families are</p> <p>17 experienced, for the most part, and well-trained</p> <p>18 professionals. The people that work with the children, the</p> <p>19 same. And I used to say to folks, you know, look, you're</p> <p>20 all reasonable people, your opinions can vary, reasonable</p> <p>21 minds, about how these cases need to be serviced can differ,</p> <p>22 and that's fine.</p> <p>23 So there would be times when you might have a</p> <p>24 caseworker who would want to move a case of children who had</p> <p>25 been in care for a period of time away from reunification</p>
<p style="text-align: right;">178</p> <p>1 after -- even after I prepared this deposition exhibit,</p> <p>2 Cauley 1, in August. But I was made aware of that at some</p> <p>3 point, possibly in connection with the time when we were</p> <p>4 preparing the Civil Service appeal that Ms. Conley</p> <p>5 subsequently withdrew.</p> <p>6 Q. And at that point in time, were you aware as well</p> <p>7 that the union steward on behalf of PW as well as other</p> <p>8 union employees was asking that action be taken to stop it?</p> <p>9 A. That was what I was advised.</p> <p>10 MR. JOYAL: I don't have any other questions.</p> <p>11</p> <p>12 CROSS-EXAMINATION</p> <p>13 BY MR. LANE:</p> <p>14</p> <p>15 Q. Mr. Cauley, you had mentioned --</p> <p>16 A. We're not done yet.</p> <p>17 Q. I just have a couple questions.</p> <p>18 A. Okay.</p> <p>19 MR. McNAIR: Not by a long shot.</p> <p>20 Q. You had mentioned a system that was established to</p> <p>21 have OCY employees express a contrary point of view. Do you</p> <p>22 remember talking about that?</p> <p>23 A. Sure.</p> <p>24 Q. I think you mentioned it briefly, but you never</p> <p>25 explained what the system was. Can you explain what that</p>	<p style="text-align: right;">180</p> <p>1 toward adoption. And a supervisor who disagreed, or a</p> <p>2 program director who disagreed with the supervisor and a</p> <p>3 caseworker who were of that mind. And that would be based</p> <p>4 on their different assessments, their training, their</p> <p>5 philosophical approach, you know, what their understanding</p> <p>6 of the legal requirements might be. So, you know, when</p> <p>7 people would not be on the same page about those kinds of</p> <p>8 decisions.</p> <p>9 And we were coming up to Court hearings where an</p> <p>10 Agency -- the Agency had to go in and state a position to</p> <p>11 the Court about what's in the best interest of this child at</p> <p>12 this time, which way should we go. We would attempt to iron</p> <p>13 that out administratively in-house, and sit down with folks</p> <p>14 and meet with folks and talk about those issues, and why</p> <p>15 people wanted to go in a particular way. And if we could</p> <p>16 get consensus, then fine, we could present, then, a</p> <p>17 consensus approach to the Court. Which we felt would be in</p> <p>18 the best interest of everybody.</p> <p>19 In those cases where after that process had run</p> <p>20 its course people still were at loggerheads, and there were</p> <p>21 some, about which way should we go. Recognizing that it</p> <p>22 wasn't the Agency's decision about what ultimately happens</p> <p>23 to a child that controls, it's the Court's, we wanted to</p> <p>24 make sure that the Court would get the benefit of</p> <p>25 everybody's point of view. The professionals that were</p>

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<p style="text-align: right;">181</p> <p>1 involved with the family, and the child. And then hear from 2 the parents, child's counsel, Court-appointed special 3 advocate if there was one involved in the case, whoever. 4 So we would at a hearing invite that caseworker or 5 whoever, you know, had a different point of view, to testify 6 and state their position and their rationale for it. Or to 7 submit a written statement with a rationale and a position 8 as part of the regular submissions to the -- to the Court. 9 So that the Court would have the benefit of that thinking. 10 Now, it didn't happen all that often, you know. 11 But there were cases, and sometimes there's strong feelings 12 on both sides of those kinds of difficult issues. But that 13 was something that was in place as long as I was around. 14 Q. You mentioned the best interests of the child. 15 Would the best interest of the child, generally speaking, be 16 a paramount concern of OCY? 17 A. Sure. 18 Q. And when OCY would issue a prognostic detention 19 order, that would be issued in the best interest of the 20 unborn child that was going to be born; is that fair to say? 21 A. Right. The order was issued not by us. It was 22 issued at our request, but by the Judge, based on 23 information supplied to the Judge that justified its 24 issuance. So, yeah, but, I mean, it was always, you know, 25 what's -- what's for the best interest of this child at this</p>	<p style="text-align: right;">183</p> <p>1 we know here, she was told on or about June 5th by Deanna 2 Cosby, at your client's request, that the detention order 3 had been issued and was available at the local hospitals. 4 So when she went to the hospital subsequent to that to have 5 the child, yes. 6 Q. Okay. And when she learned of that, she didn't do 7 anything untoward or do anything that endangered the child, 8 specifically, she didn't go to Canada. 9 A. Well, she had the child here. I don't know what 10 she did between June 5th and the time she had the child in, 11 I believe, July. 12 Q. Now, there was discussion in that e-mail between 13 Abby Conley and VW about kinship placement rather than 14 foster placement. Do you recall that? 15 A. Yeah. Let me refer to it, Mr. McNair, so that I 16 know what you're -- what you're looking at. Just please 17 bear with me a second. Yeah, I see that. 18 Q. Okay. 19 A. Yeah, it's on June 4th. 20 Q. And kinship placement is where an infant is placed 21 with a relative such as a grandparent, correct? 22 A. Yeah, that would qualify. 23 Q. But Abby knew, as of the date of this e-mail, that 24 the order was for foster care detention rather than kinship 25 detention, correct? Because she had read the order. She saw</p>
<p style="text-align: right;">182</p> <p>1 time. 2 MR. LANE: That's all I have for you. 3 MR. McNAIR: Just a couple. 4 5 REDIRECT EXAMINATION 6 BY MR. McNAIR: 7 8 Q. Did VW leave the jurisdiction or do anything that 9 endangered her unborn child as of June '04? Or May '04. 10 A. Aside from some suspected drug use while she was 11 pregnant, I don't think so. But I don't know for sure 12 because I wasn't involved in the case. 13 Q. VW was a drug user, in your opinion? 14 A. Oh, yeah. 15 Q. To your knowledge? 16 A. Oh, yeah. 17 Q. Oh, yeah? Okay. But, in fact, VW went up to 18 Saint Vincent, had her baby knowing that it was going to be 19 detained by Children Services, correct? 20 A. I don't believe that's correct. 21 Q. No? 22 A. Not from any information that's ever been provided 23 to me. 24 Q. She didn't have the baby? 25 A. Oh, I'm sorry. It's been a long day. From what</p>	<p style="text-align: right;">184</p> <p>1 the order. 2 A. I don't know -- I don't know that she actually saw 3 the order, Mr. McNair. I don't have any evidence that she 4 saw it. What I -- all I can take from this is that she was 5 aware of its existence. So for me to be able to say that 6 she knew precisely what the order provided, I don't think I 7 can tell you that. 8 Q. How do you know she was aware of the existence of 9 the order? 10 A. Because she told VW on June 4th. 11 Q. How do you believe she learned about the order? 12 A. I don't know. She may have been told by the 13 worker. She may have been told by the supervisor or the 14 program director. She may have seen it in the case record 15 if she accessed the case record. I mean, I don't know. 16 Q. And how do you know she didn't simply assume that 17 such an order had been entered? 18 A. Because she writes to Abby Conley, "P has 19 detention letters at all the local hospitals." 20 Q. Okay. And that was standard procedure when an 21 order is entered, isn't it? 22 A. Yeah, the order would be transmitted to the local 23 hospitals, that's correct. 24 Q. Right. And that was -- okay. You never saw any 25 letters between VW and her boyfriend until sometime well</p>

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<p style="text-align: right;">185</p> <p>1 after Ms. Conley was terminated by the County.</p> <p>2 A. That's right.</p> <p>3 Q. And, again, you never questioned VW or her</p> <p>4 boyfriend to authenticate or validate the contents of those</p> <p>5 letters.</p> <p>6 A. I did not.</p> <p>7 Q. Did anybody?</p> <p>8 A. I believe so.</p> <p>9 Q. Who did?</p> <p>10 A. I would only be guessing. Attorney Allgeier would</p> <p>11 know for sure, more likely than I. And I don't want to</p> <p>12 guess, Mr. McNair.</p> <p>13 Q. You believe somebody spoke to VW about those</p> <p>14 letters?</p> <p>15 A. I don't know about VW. But I'm pretty sure that</p> <p>16 the father, Mr. B, was talked to, and also his mother, who's</p> <p>17 name I have no idea what that is.</p> <p>18 Q. Who was neither an author or recipient of any of</p> <p>19 those letters.</p> <p>20 MR. JOYAL: Objection. Is that a question or is</p> <p>21 that a statement?</p> <p>22 MR. McNAIR: It's a question.</p> <p>23 A. She wasn't -- she wasn't the author, as far as I</p> <p>24 know. And I don't know if she might not have had them in</p> <p>25 her possession at some point. I don't know.</p>	<p style="text-align: right;">187</p> <p>1 A. Essentially. I think you have the letter. I've</p> <p>2 been told you have the letter. That's my recollection of</p> <p>3 how it -- essentially what it was -- was done. It was your</p> <p>4 client --</p> <p>5 Q. The letter states that that --</p> <p>6 A. Your client had told her this information. And</p> <p>7 she was conveying it to VW.</p> <p>8 Q. If I witness an incident of child abuse and report</p> <p>9 it, I understand, based on your interpretation of the law, I</p> <p>10 am prohibited by the CPSL from mentioning that to anyone,</p> <p>11 including a parent or relative of the child. Is that -- am</p> <p>12 I correct?</p> <p>13 A. No, you can --</p> <p>14 MR. JOYAL: I'm going to object.</p> <p>15 A. -- you can tell whoever you want. You're not an</p> <p>16 employee of Child Protective Services Agency.</p> <p>17 Q. Now, you stated that accusing a fellow employee of</p> <p>18 engaging in criminal conduct and child abuse is, I guess, a</p> <p>19 lot of different bad things. Is that fair?</p> <p>20 MR. JOYAL: How about picking one bad thing.</p> <p>21 A. The comment that I made had nothing to --</p> <p>22 Q. It was in response to some huge question that --</p> <p>23 argument lobbed by Mr. Joyal, so if you recall that.</p> <p>24 MR. JOYAL: Objection. Move to strike.</p> <p>25 A. The comment that I made was in response to a</p>
<p style="text-align: right;">186</p> <p>1 Q. That was my next question. How did OCY acquire</p> <p>2 those letters?</p> <p>3 A. I don't have personal knowledge of that. Attorney</p> <p>4 Allgeier knows that better than I do. But I'm given to -- I</p> <p>5 believe, with all those caveats in place, and I'll try the</p> <p>6 best I can do that to tell you what I know, is that Mr. B's</p> <p>7 mother had the letters. And somehow he wanted us to get</p> <p>8 them. I don't know how or why. That's the best I can tell</p> <p>9 you.</p> <p>10 Q. He carbon copied his mother on his letters to his</p> <p>11 girlfriend from jail.</p> <p>12 A. No, no, no.</p> <p>13 Q. How did she have copies of the letters that he</p> <p>14 wrote from jail to VW?</p> <p>15 A. No, no.</p> <p>16 MR. JOYAL: Let him answer the question.</p> <p>17 A. I'm talking about in particular. I'm talking</p> <p>18 about a single letter dated June 5th of 2004 authored by VW</p> <p>19 addressed to Mr. B.</p> <p>20 Q. Okay.</p> <p>21 A. In which she recounts having the conversation with</p> <p>22 Deanna Cosby at the behest of your client about the</p> <p>23 disclosure of the prognostic detention order.</p> <p>24 Q. The letter states that it was at my client's</p> <p>25 behest. Is that your testimony?</p>	<p style="text-align: right;">188</p> <p>1 question about an accusation only of criminal conduct of</p> <p>2 obstruction of justice as it was made against Ms. Deveney.</p> <p>3 Q. What if Ms. Deveney did, indeed, engage in</p> <p>4 obstruction of justice?</p> <p>5 MR. LANE: Objection to form.</p> <p>6 MR. JOYAL: Lack of foundation.</p> <p>7 A. Well, I would have expected that she would have</p> <p>8 been charged by now.</p> <p>9 Q. You would expect that, would you.</p> <p>10 A. Maybe.</p> <p>11 Q. Okay. What if facts exist that would support a</p> <p>12 violation of the Obstruction of Justice Statute by virtue of</p> <p>13 altering documents that are going to be submitted to a Court</p> <p>14 for adjudicative purposes?</p> <p>15 MR. LANE: Object to form.</p> <p>16 MR. JOYAL: I'm going to object to the form and</p> <p>17 lack of foundation.</p> <p>18 MR. McNAIR: Well, there's plenty of foundation.</p> <p>19 A. You know, I guess it would depend on, you know,</p> <p>20 who your district attorney is, what his assessment of it</p> <p>21 would be, and whether or not he would want to prosecute a</p> <p>22 case like that.</p> <p>23 Q. Well, I'm talking in terms of the discipline</p> <p>24 policy. Are you saying that if you know that a coworker has</p> <p>25 engaged in criminal conduct, and you say something about it,</p>

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<p style="text-align: right;">189</p> <p>1 that that is a terminable offense even though there's no 2 disciplinary action taken against the coworker? Is that -- 3 am I correct in my understanding?</p> <p>4 MR. JOYAL: Objection. What's the question?</p> <p>5 MR. LANE: Objection. Overly broad.</p> <p>6 MR. JOYAL: Are you suggesting that if -- is the 7 question that if your client accuses someone that 8 has not been charged with a crime and so she's 9 going to jail and is going to be fired, is 10 different if the person wasn't disciplined?</p> <p>11 Q. Let me ask my question.</p> <p>12 MR. JOYAL: Well, try to make it one that's 13 comprehensible, because I'm sure he doesn't 14 understand it, because I don't.</p> <p>15 A. I'll take another wing at it, Mr. McNair, if you 16 want to try -- I'll attempt to answer it, if you like.</p> <p>17 Q. Would it be a violation of the policy for an OCY 18 employee who witnessed or had knowledge of a crime committed 19 by a fellow employee to say something about that?</p> <p>20 A. It depends.</p> <p>21 MR. JOYAL: I'm going to object.</p> <p>22 A. Depends on to whom the person said it, under what 23 circumstances, and for what purpose. I think. If you're 24 asking me in this case if there's any legitimate basis upon 25 which your client could make that statement to Ms. Peebles,</p>	<p style="text-align: right;">191</p> <p>1 had with employees, whether it be staff meetings or 2 individual sit-down sessions with employees.</p> <p>3 Q. So you're telling me there is some formal method 4 or some established method of communicating this policy to 5 employees.</p> <p>6 A. I wouldn't say formal. It was an understanding 7 that we continued to reinforce to people in situations 8 where, if there were disagreement, that it would be resolved 9 according to that format.</p> <p>10 Q. Now, I think you testified earlier that after you 11 were the interim director that Gary Lucht was appointed as 12 OCY director.</p> <p>13 MR. JOYAL: He never testified to that. He said 14 he was the director until sometime in October.</p> <p>15 Q. Did Gary Lucht -- was Gary Lucht appointed OCY 16 director?</p> <p>17 A. Yeah, I think he started first part of November.</p> <p>18 Q. Okay. All right. And do you know whether or not 19 Mr. Lucht claimed to be changing any OCY policies?</p> <p>20 A. You know, I didn't really have all that much 21 contact with Mr. Lucht. So I'm not really sure whether I 22 could answer that question.</p> <p>23 Q. Do you read the paper?</p> <p>24 A. No, not if I can help it.</p> <p>25 Q. Okay. Were you aware that Mr. Lucht issued a</p>
<p style="text-align: right;">190</p> <p>1 that she made, I would say I don't see how. Because she 2 said to her not I believe this woman committed this offense, 3 but she is going to be charged with obstruction of justice 4 and she is going to jail.</p> <p>5 Q. Where were you when you overheard this 6 conversation?</p> <p>7 A. This is what Ms. Peebles told me was reported to 8 her. And that, on the issue of Section C responsibility, 9 clearly falls into the category of the type of conduct that 10 would cause a reasonable person, Ms. Peebles, to have an 11 unsavory opinion, at least, about Ms. Deveney.</p> <p>12 Q. Now, you're -- you talked about a policy that OCY 13 has that encourages people who disagree with their coworkers 14 to bring those concerns out, right?</p> <p>15 A. In the context in which I was discussing it, yes.</p> <p>16 Q. When was that policy placed in force or into 17 effect?</p> <p>18 A. That's been something that we've attempted to do 19 since the days that Judge Anthony was the Juvenile Court 20 Judge. It goes back years.</p> <p>21 Q. Where is that policy codified?</p> <p>22 A. I don't know that it's written anywhere.</p> <p>23 Q. How is that policy communicated to the employees?</p> <p>24 A. By Agency administration and by the legal 25 department, in the context of just discussions that we've</p>	<p style="text-align: right;">192</p> <p>1 memorandum to employees regarding alteration of documents 2 and calling for a redefinition of the Agency?</p> <p>3 A. Yeah, I think there was something that came out 4 maybe shortly before I left along those lines. I'm not 5 sure, but I believe so.</p> <p>6 (Cauley Deposition Exhibit 3 marked for 7 identification.)</p> <p>8 Q. Let me show you what we've marked as No. 3. Do 9 you recognize that?</p> <p>10 MR. JOYAL: I'll place an objection. It appears 11 that your client ended up getting it at her home 12 e-mail from someone, and is not identified as 13 being sent to Mr. Cauley.</p> <p>14 A. No. You know, no, I don't -- I've not seen this 15 particular document before, Mr. McNair.</p> <p>16 Q. You did not receive an e-mail from Mr. Lucht at 17 the end of November?</p> <p>18 A. I believe that I may have. But to be able to sit 19 here and tell you that this is the e-mail I got from Gary 20 Lucht, I can't do that. You know, there's no way for me to 21 be able to say that for sure. Might be. But, you know, I 22 don't know.</p> <p>23 Q. Okay. This document states -- I'm not going to 24 stop asking you about it just because you're not going to 25 authenticate it.</p>

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<p>1 A. Oh, come on, I'm really tired.</p> <p>2 Q. I'll authenticate it another way. I don't think</p> <p>3 there's any question that this is the document.</p> <p>4 A. Okay.</p> <p>5 Q. This document sets forth "Under no circumstances</p> <p>6 will anyone interfere with, alter or fail to present</p> <p>7 information because there's disagreement in desired</p> <p>8 outcome." Does that represent a change in Agency policy, to</p> <p>9 your understanding?</p> <p>10 A. I don't think so.</p> <p>11 Q. Okay. The bottom of that first page, it says,</p> <p>12 "Therefore, all case-specific communications will go forward</p> <p>13 without any alteration whatever." Is that a change in</p> <p>14 Agency policy?</p> <p>15 MR. LANE: I'm going to object to the form of the</p> <p>16 question.</p> <p>17 MR. McNAIR: What's the problem with the form of</p> <p>18 the question?</p> <p>19 MR. LANE: Because it requires him to interpret</p> <p>20 what that means, and he didn't write it. I'm</p> <p>21 sorry, you rolled your eyes because of what?</p> <p>22 MR. McNAIR: Nothing.</p> <p>23 MR. JOYAL: Well, I want to know too. I mean,</p> <p>24 I've already objected to the lack of</p> <p>25 authentication of it. I want you to tell me how</p>	<p>1 you seemed to disagree many hours ago, was that we</p> <p>2 could raise objections on behalf of Mr. Lanzillo.</p> <p>3 And if Mr. Lane believed that Mr. Cauley, in your</p> <p>4 opinion, since you think that I was not part of</p> <p>5 that, could advise Mr. Cauley not to answer a</p> <p>6 question, he can do so. Because you granted him</p> <p>7 that ability.</p> <p>8 Now, I believe that I was given that ability</p> <p>9 as well. I'm not advising him one way or the</p> <p>10 other. I asked you how you're going to</p> <p>11 authenticate a document that apparently is no</p> <p>12 longer attorney/client privilege that came from</p> <p>13 your client at her ilovejesus.net address which</p> <p>14 says, better read this, but doesn't suggest at all</p> <p>15 that this is a forwarded document or anything at</p> <p>16 all. It just is a typed document. So how he's</p> <p>17 going to testify that that is an accurate</p> <p>18 representation of that document is beyond me.</p> <p>19 MR. McNAIR: I'm not asking him if it's an</p> <p>20 accurate representation.</p> <p>21 MR. JOYAL: You did. You just asked him --</p> <p>22 MR. McNAIR: I did, and he couldn't answer the</p> <p>23 question.</p> <p>24 MR. JOYAL: You just asked him if --</p> <p>25 MR. McNAIR: Just --</p>
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<p>1 you're going to authenticate the document today.</p> <p>2 MR. McNAIR: I'm probably not going to</p> <p>3 authenticate it today.</p> <p>4 MR. JOYAL: Well, then I don't think he needs to</p> <p>5 answer questions --</p> <p>6 MR. McNAIR: We'll authenticate it some other</p> <p>7 time, but I'm going to ask him questions about it.</p> <p>8 MR. JOYAL: Well, I think under the rules, he</p> <p>9 doesn't have to answer any questions regarding a</p> <p>10 document he says he never saw.</p> <p>11 MR. McNAIR: I think if you tell the witness not</p> <p>12 to answer questions --</p> <p>13 MR. JOYAL: I'm not.</p> <p>14 MR. McNAIR: -- except to preserve a privilege,</p> <p>15 you could wind up in some significant more</p> <p>16 difficulty with our Judge in this case.</p> <p>17 MR. JOYAL: Mr. McNair, do me a favor, will you,</p> <p>18 okay, don't give me a lecture. All right. I</p> <p>19 didn't advise --</p> <p>20 MR. McNAIR: I got to sit here and take your</p> <p>21 lectures and I can't lecture you.</p> <p>22 MR. JOYAL: I didn't advise the witness as to</p> <p>23 anything.</p> <p>24 MR. McNAIR: Be fair, Mr. Joyal.</p> <p>25 MR. JOYAL: I think that what we said, although</p>	<p>1 MR. JOYAL: -- that was a change in Agency policy.</p> <p>2 MR. McNAIR: Do you want me to call the Judge?</p> <p>3 MR. JOYAL: You can call anybody you want.</p> <p>4 MR. McNAIR: Dummy up. Let me ask my questions.</p> <p>5 MR. JOYAL: Why don't you call Mr. Lucht and ask</p> <p>6 him about it.</p> <p>7 MR. McNAIR: If I have to, I will.</p> <p>8 MR. JOYAL: Well, then, do it.</p> <p>9 BY MR. McNAIR:</p> <p>10 Q. But I'm asking you to assume that this is a true</p> <p>11 copy of Mr. Lucht's memo from the end of November 2005</p> <p>12 regarding redefinition of the Agency and new policies. And</p> <p>13 I'm asking you if his statement that, "Therefore, all</p> <p>14 case-specific communications will go forward without any</p> <p>15 alteration whatever," states a new policy or if that is the</p> <p>16 policy that was in effect previously.</p> <p>17 MR. JOYAL: Okay. I'm going to object to it being</p> <p>18 even put as an exhibit to this deposition without</p> <p>19 any authentication of the document.</p> <p>20 MR. LANE: And I simply renew my objection to the</p> <p>21 form.</p> <p>22 Q. You may answer the question.</p> <p>23 A. I'm going to try and answer this the best way I</p> <p>24 can, Mr. McNair. And, that is, I don't know what this</p> <p>25 means. All case-specific communications will go forward.</p>

50 (Pages 197 to 200)

<p style="text-align: right;">197</p> <p>1 Go forward where. From whom to whom. In what format. 2 Without any alteration whatever. I don't know what that 3 means. You know, so I can't answer the -- I'm not going to 4 speculate about what that means. 5 Q. Do you think that this memo was issued in response 6 to the incident where Susan Deveney altered the Court 7 summary submitted by Ms. Conley? 8 A. I don't think Susan Deveney altered the Court's -- 9 the Court's summary. 10 Q. I know you don't think that. Do you think this is 11 in response to that? 12 MR. JOYAL: Objection. Argumentative. 13 MR. LANE: Objection to form. 14 MR. JOYAL: Speculative. 15 A. I can't answer that because I don't know who the 16 author of this is other than your client. And maybe she 17 issued it. I don't know. I can't tell you for sure that 18 this is what Mr. Lucht generated. 19 Q. And you don't read the papers? 20 A. Well, not if I can help it, Mr. McNair, no. 21 Q. Because the papers have bad things to say about 22 OCY? 23 MR. JOYAL: Objection. Move to strike. 24 A. No. 25 Q. I read the paper every day. I don't know why you</p>	<p style="text-align: right;">199</p> <p>1 A. Yeah. 2 Q. In October you were -- you were the interim 3 director until October 31st? 4 A. Right. 5 Q. In the month of November, were you the Solicitor 6 still? 7 A. Sure. I was the Solicitor even when I was the 8 interim director. 9 Q. Were you approached by Mr. Lucht at any point in 10 time and asked for your input discussion concerning any 11 policy statements that he was changing, especially one that 12 may have concerned alteration of documents? 13 A. Never. 14 Q. Do you know whether or not the County Solicitor, 15 who I believe was Mr. Onorato at the time, was ever 16 approached by Mr. Lucht regarding any change in OCY policy? 17 A. Not to my knowledge. 18 Q. Do you know whether or not Mr. Lucht had a 19 conversation with the former director of OCY or any other 20 former employee in the administration of OCY concerning any 21 change in OCY policy? 22 A. Not to my knowledge. 23 Q. Did Mr. Lucht talk to you at all during the period 24 of time from November 1 until December 31st? 25 A. Very little. I made several attempts to see if we</p>
<p style="text-align: right;">198</p> <p>1 wouldn't. 2 A. Go ahead. 3 Q. Why don't you read the paper? 4 MR. LANE: Is that a question? 5 A. Personal preference. Thank you. 6 MR. LANE: I don't read it either. 7 Q. Have you had the opportunity to review the report 8 issued by the Child Welfare League? 9 A. No. 10 Q. Have you reviewed any summaries of it? 11 A. No. 12 Q. No interest in that. 13 A. Not anymore. 14 MR. McNAIR: That's all I have. 15 MR. JOYAL: I just want to follow up on questions 16 here especially regarding this document that I've 17 objected to. 18 19 RE-CROSS-EXAMINATION 20 BY MR. JOYAL: 21 22 Q. When did you leave the Agency? 23 A. Whatever the last business day of 2005 was, 24 whatever that -- 25 Q. Sometime in December.</p>	<p style="text-align: right;">200</p> <p>1 could sit down with him as the legal department to see if -- 2 to let him know what we did. And to make sure that, as I 3 put it to him in an e-mail, I believe, that we were all on 4 the same page about how we wanted things handled legally. 5 Q. Did he meet with you? 6 A. I got no response. 7 Q. Okay. How many days was it between the time that 8 Mr. Lucht took his appointment and the new election took 9 place for the new County Executive? 10 A. I would have to guess it was about a week. 11 Q. Okay. And at some point in time, did 12 Mr. DiVecchio -- was he elected to be the Executive? 13 A. At some point. 14 Q. And upon Mr. DiVecchio's election, did you believe 15 that your career at OCY was over? 16 A. Oh, pretty much. 17 Q. And did you understand that many of the other 18 people at OCY may have had their careers ended as well? 19 A. Well, that, in fact, turned out to be the case. 20 Q. And what about other department heads, were they 21 replaced? 22 A. Some were. 23 Q. But you were there for almost two months, trying 24 to do your job as Solicitor, and couldn't get any response 25 from the person who was your boss?</p>

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<p style="text-align: right;">201</p> <p>1 A. Pretty much. The only -- really, the only contact 2 of any -- of any meaningful discussion was when people would 3 complain about things that were happening in their cases. 4 And they would complain to him. He would ask me to look 5 into it and provide him some response to what was going on 6 with the case. 7 Q. All right. So for the sake of this document, this 8 alleged document that Ms. Conley sent to our lawyers, you 9 had no -- you were not contacted or nothing was discussed 10 with you, even as you were the Solicitor. 11 A. Nothing about any policy change of anything that 12 might even remotely resemble what is in that document, no. 13 Q. And do you know whether or not Abby Conley ever 14 made any phone calls to either Mark DiVecchio or Gary Lucht 15 concerning your position or asking for her job back at OCY 16 after the election? 17 A. I would have no way of knowing that. 18 Q. Did you ever see any photographs of Ms. Conley 19 with Mr. DiVecchio? 20 A. No. I'm sorry, I didn't. 21 MR. McNAIR: How does this relate to an issue 22 pleaded? 23 MR. JOYAL: I have no other questions. 24 MR. LANE: I have no other questions. 25</p>	<p style="text-align: right;">203</p> <p>1 A. You want my personal opinion? 2 Q. I'm asking you whether or not it's your -- 3 A. Yeah, I can't imagine why else it would have 4 happened. 5 Q. Did you support another candidate in the election? 6 A. I supported no candidates. I do not involve 7 myself in the politics at all around here. 8 Q. Are you registered to vote? 9 A. Yeah. 10 Q. As a Republican -- 11 A. Correct. 12 Q. -- or a Democrat? Okay. And you believe it was 13 because of partisan differences that you were replaced? 14 A. Well, it's -- I think it's more complicated than 15 that. We don't have enough time to go into it, I don't 16 think, Mr. McNair. 17 MR. McNAIR: That's all the questions I have. Oh, 18 one more. 19 Q. Do you believe that you were terminated because 20 Abby Conley called for your termination, because she called 21 up Mark DiVecchio and said fire Mike Cauley? 22 A. Could be part of it. I don't know. I wouldn't be 23 surprised. 24 Q. If she said it or if it worked? 25 A. Both.</p>
<p style="text-align: right;">202</p> <p>1 FURTHER REDIRECT EXAMINATION 2 BY MR. McNAIR: 3 4 Q. Is it your belief that -- well, first of all, did 5 you leave OCY voluntarily or were you terminated? 6 A. I was terminated. 7 Q. Were you terminated for cause? 8 A. No. 9 Q. How did that come about, then? Were you an 10 at-will employee under the direction of the County 11 Executive? 12 A. That appears to be -- to have been my situation. 13 How it came about was I got a letter in my interoffice mail 14 on the 15th of December, over Mr. DiVecchio's signature, 15 indicating that after he took office my services there would 16 no longer be required. 17 Q. Okay. So you got a letter from Mark DiVecchio -- 18 A. Correct. 19 Q. -- on December 15th. 20 A. Correct. And then I got a subsequent piece of 21 correspondence from Mr. Lucht confirming what's called an 22 involuntary retirement under the County Personnel Code. 23 That was in late December. 24 Q. Do you believe that your employment was terminated 25 for political reasons?</p>	<p style="text-align: right;">204</p> <p>1 MR. McNAIR: Okay. Thanks. That's all I have. 2 MR. JOYAL: Mike, you have the right to read the 3 deposition, make any corrections you choose to, or 4 you can waive signature and do whatever. 5 THE WITNESS: I think I would like to. I'm 6 retired now. 7 MR. JOYAL: Why don't you make arrangements -- 8 since I don't represent him. You should make 9 arrangements with the court reporter to get her to 10 send you the transcript directly. 11 12 (Deposition concluded at 4:24 p.m.) 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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